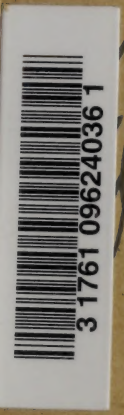

IMPORTANT

—TO—

Employer and Employee

RIGHTS OF EACH

DEFINED BY

Judge Alvin W. Kumler.

INJUNCTION CASE

—OF—

The Dayton Manufacturing Co.

OF DAYTON, OHIO,

AGAINST

THE METAL POLISHERS, BUFFERS, PLATERS AND BRASS WORKERS UNION NO. 5, AND OTHER DEFENDANTS.

Tried at the May Term, 1901, of the
Court of Common Pleas, Montgomery County, Ohio.
Hon. Alvin W. Kumler, Judge.

PICKETING, BOYCOTTING, PERSUASION AND OTHER METHODS EMPLOYED IN LABOR DIFFICULTIES, ALL OF WHICH ACTS ARE CLEARLY SHOWN AND DECIDED TO BE UNLAWFUL AND CONTRARY TO THE FUNDAMENTAL LAW AND PRINCIPLES UPON WHICH OUR REPUBLICAN FORM OF GOVERNMENT IS FOUNDED.

INDIVIDUAL LIABILITY OF MEMBERS OF LABOR ORGANIZATIONS FOR DAMAGES CAUSED BY THE ACTS OF SUCH ORGANIZATIONS.

This Pamphlet should be read and thoughtfully considered by employers and employees, and all persons interested in a correct solution of the labor problem.

THE EMPLOYERS ASSOCIATION,
Of Dayton, Ohio.

June, 1901.

Brief History of the Case.

MR. C. H. KUMLER, FOR PLAINTIFF.

To give any account of this case different from what the title indicates, would be to write a good sized book, and not the two or three pages that are to follow.

Men discharged because of conspiracy to limit out-put.

For some time prior to the 9th day of October, 1899, it became apparent to the management of the Dayton Manufacturing Company that a conspiracy had been formed to curtail the out-put of what is known as the polishing department of the Company, and on October 9, 1899, all of the men in this department were discharged. The fact of such conspiracy was established by the testimony, which developed that on the 20th of September, 1899, and October 4th, 1899, the greater number of the men discharged had been either re-instated or initiated in the defendant Union, as shown by its minntes.

Metal Polishers' Union champions cause of discharged men.

This discharge was reported to the Metal Polishers' Union on the same evening, and from that time this Union took up the supposed grievances of the discharged men. The committees from the Union then waited upon the officers of the Dayton Manufacturing Company for the purpose of presenting their cause and a number of interviews followed between these committees and Mr. John Kirby, Jr., the Company's General Manager.

Plaintiff asserts right to determine who it will employ, and refuses to re-instate men who were obnoxious to the Company.

It soon became apparent to Mr. Kirby that these committees were bent upon forcing the Company to re-employ all the discharged men, and upon this rock the representatives of the Union, upon the one side, and the management of the Company upon the other, split—the Company always maintaining its legal right to engage the services of whomsoever it saw fit. A number of the discharged men were competent workmen, while others were obnoxious to the Company. It was this latter class that the Company declined to re-employ, but it was always ready and

willing to give employment to such of the discharged men whom it believed to be competent, and who were willing to work to promote rather than to destroy the efficiency of the polishing department of the Dayton Manufacturing Company.

At the time of the interviews already referred to, a system of picketing was instituted around the factory of the company, under the supervision and direction of leading men of the Union. The inauguration of the boycott followed, and the company, being without men to do the work in the polishing department, was compelled to send such work to other shops in the city of Dayton and also to shops outside of the city. The Dayton Manufacturing Company, by reason of the tactics pursued by the Union, did not attempt to put any polishers to work in that department until February 1st, 1900. The picketing, boycotting and inducing men to quit work continued until the 12th day of February, 1900, when the company, for the protection of its officers, property and employees, was compelled to file its bill in equity in the courts of Montgomery County, Ohio, praying that the Metal Polishers Union and certain of its members be enjoined from the unlawful acts heretofore mentioned. The company employed as its attorneys in that case: Oscar M. Gottschall, Esquire, and Hon. John A. McMahon.

Picketing and boycotting resorted to. Effort of Company to have work done elsewhere opposed by Union. Injunction applied for.

Peace and quiet followed the bringing of this suit and peace and quiet continued until the 8th day of March, 1900, the day set for the hearing of that case. The injunction, so much dreaded by labor organizations, did its work well and perfectly. On the day the case came on for hearing, the Metal Polishers Union, and the other defendants, came into court and upon their denying that they had committed any of the acts set forth in the bill of equity, and upon their statement made in open court that they would not in the future commit any such wrongs, the case was dismissed against them, without prejudice to another action.

Injunction secured peace and quiet, and case was dismissed, but only temporarily.

This is the only time in the history of this great case when the company was buncoed—buncoed, however, because it believed the Union and the other defendants to be acting in good faith, having been assured by two of the principal officers of the Union that they would do all in their power to see that the agreement, so entered into, would be carried out to the letter, and that

Plaintiff buncoed by false promises of the Union.

the plaintiff would not have occasion to come into court again with a similar complaint.

Picketing resumed; employees assaulted.

Picketing, however, around the factory was soon resumed; employees of the company were threatened and assaulted; large crowds, as many as 250 at a time congregating around the premises of the Dayton Manufacturing Company. The dismissal of the injunction suit took the bridle off the Union and its members.

Violation of agreement made in open Court, necessitates a second application for injunction. Boarding house established in factory.

The Dayton Manufacturing Company endured all this, the result of broken promises made in open court, until the 14th day of May, 1900, when it was compelled to appeal to the courts again for relief and on that day filed its second bill in equity against the Metal Polishers Union and other defendants, and upon the filing of this bill a temporary injunction was allowed. In the meantime, on March 29th, the polishers were laid off until protection could be provided, and on April 6th, the company established a boarding house in its factory and provided itself with means of protecting its property and employees against the riotous acts of the Union.

Personnel of counsel.

Charles H. Kumler, Esquire, who had, prior to the 14th day of May 1900, been employed by the company to defend its employees in criminal actions instituted against them by the Union, became associated with Messrs. Gottschall and McMahon to assist in the trial of the second injunction suit.

One hundred witnesses examined.

The trial of the case occupied 14 days, during which over one hundred witnesses were examined. On June 1st the court delivered his opinion in the case, deciding every point in favor of the Dayton Manufacturing Company.

Case important because of issues involved and high standing of Court and counsel.

This case, considering the present labor conditions, is the most important ever tried in this part of the country. The able arguments of Messrs. Gottschall and McMahon, for the Plaintiff. and the learned opinion of Judge Alvin W, Kumler will be found in this publication.

COMMON PLEAS COURT

OF MONTGOMERY COUNTY, OHIO.

Petition No. 21173.

THE DAYTON MANUFACTURING CO.,
Plaintiff.

vs.

THE METAL POLISHERS, BUFFERS, PLATERS AND BRASS WORKERS UNION NO. 5, OF DAYTON, OHIO; EDWARD J. LEO AND 240 OTHERS,
Defendants.

The Plaintiff, the Dayton Manufacturing Company, says that it is a corporation, duly incorporated and organized under the General Laws of Ohio, on the 3rd day of February, 1883, with a capital of $100,000.00; that it is authorized and empowered, under its articles of incorporation, to manufacture railway car trimmings in brass and plated goods, locomotive headlights and various other fabrics; that it has invested in buildings and the machinery and tools and other appliances necessary and appurtenant to its said business, the sum of at least $250.000.00; that it now has at least one hundred and fifty (150) employees at work in said factory and has a large amount of orders and work on hand to be filled, which it can do if not interfered with; that in carrying on said business it has a department in said factory known as a polishers' and buffers' department, in which it had constantly employed a number of metal polishers, and that it was necessary to have said department and men employed therein for the operation of its business.

The Plaintiff further says that the Defendant, the Metal Polishers, Buffers, Platers and Brass Workers' Union No. 5, of Dayton, Ohio, is a union of metal polishers, buffers, platers and brass workers, of Dayton, Ohio; that its present officers are George Ritter, President; Phil Fay, Recording Secretary, and Grant Lucar, Financial Secretary, and that such organization is a voluntary association of the members thereof, whose proceedings are secret.

The Plaintiff further says that the Defendant, Edward J. Leo, was on the 9th day of October, 1899, and for a long time thereafter, President of said Metal Polishers, Buffers, Platers and Brass Workers' Union No. 5, of Dayton; that he and the other Defendants are, as Plaintiff is informed, members of said defendant Union No. 5, of Dayton, Ohio.

Defendants discharged because of inferior workmanship.

Plaintiff further says that on October 9th, 1899, Louis Kissinger and sixteen others were in the employ of this Plaintiff in the polishing and buffing department of said business of the Plaintiff; that prior to said last named date the output of said polishing and buffing department was not satisfactory to the Plaintiff and its officers and managers, and it being for the best interests of the Plaintiff and its business, it on said 9th day of October, 1899, caused to be discharged from its employ and from working in its factory the aforesaid Louis Kissinger and sixteen other Defendants herein.

Work done at other factories

That since the said 9th day of October, 1899, the Plaintiff has been compelled to have a large portion of the polishing and buffing required in its business, done outside of its own factory, and during said time the said Defendants, the Metal Polishers, Buffers, Platers and Brass Workers Union No. 5, of Dayton, Ohio, through its officers, agents and members, have interfered with the doing of said work by other parties in the City of Dayton, Ohio, and have compelled said other parties to cease said work for said Plaintiff, and the Plaintiff has been obliged to have said work done in other places than the City of Dayton, Ohio.

Employees whose services are retained, threatened with personal violence by Metal Polishers' Union.

The Plaintiff further says that the said Defendant Union No. 5, through its officers, agents and members, and others of the Defendants, have from time to time since said 9th day of October, 1899, threatened the emyloyees now in the employ of said Plaintiff in its polishing and buffing department, with personal violence if they did not leave the employment of the Plaintiff, and have sought by said threats to intimidate said employes and oblige them to leave the service of the said Plaintiff, and by said threats have seriously interfered with the business of said Plaintiff and in the operation of its manufactory.

Defendants combine to compel employees to quit work.

The Plaintiff further says that the said Defendant Union No. 5, through its officers, agents and members has combined, with the object and intent, by force, threats and intimidation against employees remaining in its service, to compel said employees to quit the service of the plaintiff and by threats and intimidation to prevent others of the same trade, desiring the places of the Defendants so discharged, from taking such employment; that the object and intent of said Defendant Union No. 5 and its officers, agents and members, as well as of the other

Defendants, is to cripple the business of the Plaintiff and embarass it in the prosecution of its said business and compel the employees in said department to quit the employ of the Plaintiff, and thereby oblige Plaintiff to yield to any and all demands the said Union No. 5 through its officers, agents, members and the other Defendants, may make.

The Plaintiff further says that the said Union No. 5, through its officers, agents and members, and others of the Defendants, send their committees, to the manufactory of the Plaintiff, which committees being of the Defendants herein have threatened to use force toward the employees in its employ, if they did not leave the service of the Plaintiff; that the visits of said committees of the Defendants herein, interfere with the proper conduct of the business of the Plaintiff, and prevent its employees from doing the work for which they are hired; that said Defendants are in such combination to prevent by force, threats and intimidation the employment of such men as are desired by the officers and managers of the Plaintiff, and necessary in the conduct of its business, and by said threats and intimidation do actually obstruct the control and management of the property and business of the Plaintiff and prevent the plaintiff from employing such persons as desire to work for it.

Committees prevent employment of other workmen.

The Plaintiff further says that said actions, threats and intimidations by the said Union No. 5, its officers, agents and members, and of the other Defendants, have caused a great and irreparable loss to this Plaintiff for which it has no adequate remedy at law; that it has no recourse for the threats and intimidation against its employees, and the preventing of those that desire to enter its employ from doing so and that the acts and doings of the Defendants are continuous acts of trespass that so interfere with the proper conduct of its business as to cause a continuous loss to the Plaintiff and injury to its business, for which no adequate damages can be assessed, and the injuries and loss to its business and property threatened by the said Defendants are irremediable by law.

Continuous acts of trespass cause material loss for which there is no adequate remedy at law.

Plaintiff further says that each and all of the grievances hereinbefore complained of, took place and continued from the 9th day of October, 1899, until the 12th day of February, 1900, and became so oppressive and damaging to the conduct of Plaintiff's business and so annoying, dangerous and damaging to its employees, who desired to work in said polishing and buffing department, that this Plaintiff, in order to protect its property and business, and the lives and interests of its emyloyees against the intimidation and threatening assaults of said Defendant Union No. 5, its officers, agents and members, on said 12th day of Februory, 1900, was compelled to appeal to this Court for protection; that on said 12th

Temporary restraining order and perpetual injunction applied for.

day of February, 1900, this Plaintiff did file its petition and bill in equity in this Court against the Defendants, The Metal Polishers, Buffers, Platers and Brass Workers Union No. 5 of Dayton, Ohio, being case No. 20,946 on the appearance docket of this Court, which petition and Bill in Equity contained substantially each and all of the allegations and statements herein-before set forth, praying for a temporary restraining order, against the said Union No. 5, and its officers, agents and members, each and every one, and the Defendants, enjoining them from using any force, threats or intimidation toward the employees of the plaintiff to compel them to quit the service of the Plaintiff, individually or by committees; and from in any manner obstructing or interfering in the control of the business and manufactory of the Plaintiff and from using any force, threats or intimidations toward any one seeking to become employees of said plaintiff, and that upon final hearing a perpetual injunction was prayed for against said Defendants therein named; that on said 12th day of February, 1900, a temporary restraining order was granted by this Court as prayed for in said Petition and continued in full force and effect until the 8th day of March, 1900, the day upon which said cause came on for hearing.

Metal Polishers' Union agree to obey the law if injunction proceedings are dismissed.

Plaintiff further says, that on said 8th day of March, 1900, the date fixed for the hearing of said case by this Court, and while the Plaintiff was in Court ready for trial, the Defendants Union No. 5 came into Court by their Counsel and stated in open Court that they and each of them would not interfere with the business or employees of the Plaintiff in the manner charged in said petition, and that in consideration of said statement and agreement so made, and upon the personal promises and agreements made by the Defendant Edward J. Leo, then President of said Union No. 5, and Charles Atherton, Ex-Secretary of said Union No. 5, and a member thereof, that the business of Plaintiff and its employees would not be interfered with in any manner as charged in said Petition, Plaintiff dismissed its proceedings without prejudice to a future action, and that in pursuance of said statements and agreements an entry in said cause No. 20,946 was placed upon the records of this Court in the words and figures following, to-wit:

"This day came on the above cause for hearing upon the motion for a temporary restraining order, as prayed for in the petition. Thereupon came the Defendants and by their counsel, not admitting any of the matters charged against them in the petition, stated in open court that they and each of them had and now have no intention of committing any of the acts charged in the petition, or of interfering with the business or employees of the Plaintiff in the manner charged in the Petition, and will not

do so, in consideration of which statement this cause is dismissed, without prejudice to a future action. Costs paid.

A. W. KUMLER, *Judge.*

Plaintiff further says that from the 12th day of February, 1900, the date of the allowance of said temporary restraining order by this Court, until the 8th day of March, 1900, when said suit was dismissed as hereinbefore stated, the Plaintiff was permttted to conduct its business, and the persons employed by it were permitted to perform the labor for which they were employed, without molestation or interference; but, Plaintiff says, that within a few days after the 8th day of March, 1900, the day upon which said suit was dismissed and the restraining order dissolved upon the agreements and promises made by the Defendants, the said Defendants, Union No. 5, through its officers, agents and members, and others unknown to Plaintiff, who had combined and confederated together prior to February 12th, 1900, and are still combining and confederating together, for the purpose of interfering with the business of the Plaintiff and its employees, have renewed their threats and intimidation against the employees of Plaintiff and by said continued threats and intimidation, regardless of the agreements and promises so made by them, do actually obstruct and interfere with the control and management of the property and business of the Plaintiff and prevent the Plaintiff from employing persons that desire to work for it, and by such threats, intimidations and interference are preventing employees of Plaintiff from performing and carrying out their contracts of employment with Plaintiff.

Pending restraining order Defendants obeyed the law but resumed illegal acts when suit was dismissed.

Plaintiff further says that the said Defendants Geo. W. Rittter as President, agent or representative of The Metal Polishers, Buffers, Platers and Brass Workers Union No. 5 of Dayton, Ohio, and the other Defendants in this action, and the Defendant, The Metal Polishers, Buffers, Platers and Brass Workers Union No. 5 of Dayton, Ohio, acting through its representatives and members, and its committees or walking delegates, so called, and others associated and confederated with them, unknown to Plaintiff, and whom therefore, Plaintiff is unable to make parties herein, are unlawfully and wrongfully combining and confederating together to prevent, by intimidation and threats, persons from furnishing supplies to and dealing with Plaintiff; and that the said Metal Polishers, Buffers, Platers and Brass Workers Union No. 5 of Dayton, Ohio, the said Geo. W. Ritter and the other defendants and their associates and confederates, whose names are at this moment unknown to Plaintiff, began shortly after October 9th, 1899, and have since constantly pursued, with the exception of the period during which said restraining order

Persuasion, intimidation and violence resorted to prevent persons from doing business with Plaintiff.

was in force, a course of threats and intimidation and persuasion and personal violence, not only of preventing persons from dealing with Plaintiff, but also to intimidate and prevent the employees of Plaintiff from continuing in their employ, and from peaceably or otherwise pursuing their work in Plaintiff's factory; and Plaintiff says that the said Union No. 5 and some of its members, and others of the Defendants and their associates and confederates unknown to Plaintiffs, have intruded into and upon the factory premises and buildings of Plaintiff when men employed by Plaintiff were at work or about to leave their work, and have solicited men who were peaceably pursuing their avocations and who were satisfied to remain in the employment of Plaintiff, and also have threatened and attempted to intimidate them, to quit the employment of Plaintiff with the purpose and intent, as Plaintiff believes and therefore charges, of preventing Plaintiff from continuing its business, and thus to force Plaintiff to submit to their demands.

Workmen assaulted and proprietors of boarding houses threatened and intimidated.

Plaintiff further says that said Union No. 5 and some of its members, and others of the Defendants and their associates and confederates unknown to Plaintiff, have congregated in front of and around the factory of Plaintiff, and when the men employed by the Plaintiff in the Polishing and Buffing department were leaving their work, have accosted them and followed them, and have solicited and assaulted men who were peaceably leaving their work for their homes and boarding houses, and who were satisfied to remain in the employ of Plaintiff, and also have threatened and attempted by violence and otherwise to intimidate them to quit the employ of Plaintiff, and in fact assaulted them because they refused to quit the employ of Plaintiff, and have called upon them by committees and otherwise and have solicited them, and also have threatened and atttempted to intimidate them to quit the employment of Plaintiff, and have called upon the proprietors of boarding houses where said employees of Plaintiff boarded, and solicited them to refuse to board and lodge the employees of Plaintiff and also have threatened and attempted to intimidate them to refuse to board and lodge the employees of Plaintiff, with the purpose and intent, as Plaintiff believes and therefore charges, of preventing Plaintiff from continuing its business, and thus to force Plaintiff to submit to their demands.

Pickets constantly on duty at factory.

Plaintiff further says that said Defendant Union No. 5 and some of its members, and others of the Defendants and their associates and confederates, from early morning until late at night, constantly hang about and loiter around Plaintiff's factory at the place aforesaid and upon the streets, and other grounds secured by them for that purpose, in close proximity, for the purpose of picketing the premises of Plaintiff, and to watch and ascertain who are employed by the Plaintiff in the polishing and buffing department of its factory.

And as showing the purpose of the Metal Polishers, Buffers, Platers and Brass Workers' Union No. 5, of Dayton, Ohio, said George W. Ritter and others, members or officers of said Union, and their associates and confederates, who are all combining and confederating together for the purpose of preventing the employees of Plaintiff who are desirous of working, from continuing in the employ of Plaintiff under written and unexpired contracts for that purpose, and others from entering the employ of Plaintiff, and thereby ruining the Plaintiff's business, it states: That on the evening of March 22, 1900, as George Meeker, Charley Furry, Ora Kendle and ——— Brownlee, employees of Plaintiff, engaged in the polishing and buffing department of its factory, were on their way home from their work, the Defendants, Louis Kissinger, Charles Brigman and D. Gebhart, members of said Union No. 5, as Plaintiff believes and is informed, and others of their associates and confederates, stopped them and surrounded them, and endeavored, by threats and intimidation and persuasion, to induce them to quit working for Plaintiff in their polishing and buffing department, and leave the employ of Plaintiff and violate their written and unexpired contracts with Plaintiff. On the evening of the same day, as said Meeker, Brownlee, Harry Brown and Jerry Hawkins, employees of Plaintiff, were peaceably leaving their work at Plaintiff's factory, the Defendants, William Orr, Charles Brigman, Louis Kissinger, D. Gebhart, James Whaley and William Yahn surrounded them and endeavored, by threats and intimidation, personal violence and persuasion, to induce them to quit working for Plaintiff, and followed them and continued their threats and intimidations against and persuasion upon some of them until they reached their homes.

Police protection necessary because employees refuse to violate written contract.

On the evening of March 24, 1900, as said Meeker and Hawkins and others of the employees of Plaintiff, employed in the polishing and buffing department of Plaintiff's factory, came out of the shop, there appeared in front of and around Plaintiff's factory, said Defendants, William Orr, Charles Brigman and divers and sundry other persons, members of said Union No. 5, and their associates and confederates, and as said employees left for their homes, followed them, and in order to protect said employees of Plaintiff from intimidation and violence on the part of said Defendants and their associates, it became necessary for police officers to protect them and accompany some of them to their homes.

Employee, acting as a sworn police officer, arrested for carrying concealed weapons.

On the 24th day of March, 1900, the Defendant, William Yahn, for the purpose of inducing the said Jerry Hawkins, an employee of Plaintiff, to quit working in the polishing and buffing department of Plaintiff, caused said Hawkins to be arrested for carrying a concealed weapon upon his person,

knowing full well that said Hawkins was a special officer of the City of Dayton, duly appointed by the Board of Police Commissioners, of the City of Dayton. and believed that he had a right to carry a weapon as such police officer; and that the said William Yahn, the Metal Polishers, Buffers, Platers and Brass Workers' Union No. 5, through its officers, agents and members and others so combining and confederating with them, prosecuted said Hawkins and caused him to be fined and which was so done by them, as Plaintiff believes and is informed, and therefore charges, for the purpose of inducing said Hawkins to violate his contract of employment with Plaintiff and abandon the employ of Plaintiff, and thereby compel this Plaintiff to submit to the demands of said Defendants, their associates and confederates.

Police protection required.

On the evening of March 26, 1900, as the employees of Plaintiff in the Polishing and Buffing Department were quitting their work, there appeared in front of and around Plaintiff's factory said Defendants, William Orr, Charles Brigman, William Yahn, and divers and sundry other persons, members of said Union No. 5, and their associates and confederates, and as said employees left for their homes, followed them, and in order to protect said employees of Plaintiff from intimidation and violence from said Defendants and their associates, it became necessary for police officers to protect them and accompany some of them to their homes.

On the evening of March 27th, 1900, Plaintiff, in order to protect its employees working in the polishing and buffing department from probable intimidation and threatened violence on their way home, permitted some of them to leave their work before quitting time, and as O. E. Kendle and Harry Brown, employees of Plaintiff, started for their homes, certain of the Defendants boarded the car on which said Kendle and Brown were riding, and on reaching Main Street said Kendle and Brown, believing themselves in danger of personal violence, left said car, followed by certain of said Defendants, and went to Police Headquarters, and, receiving no officer to accompany them home, went to the corner of Ludlow and Fourth Streets in the City of Dayton, Ohio, followed by certain of said Defendants, and while waiting for a car certain of said Defendants surrounded them and endeavored by threats and intimidation and personal violence and persuasion, to induce them to quit working for Plaintiff and violate their contracts with Plaintiff, and on said Kendle and Brown refusing to comply with their demands, assaulted them, and continued to assault them until other persons interfered and then said certain Defendants left them and fled.

Brutal and cowardly assault by members of Metal Polishers' Union.

On the same evening, to-wit: March 27th, 1900, as George Meeker and Jerry Hawkins and other employees of Plaintiff,

were quitting work and getting ready to leave for their homes, there appeared in front and in the vicinity of Plaintiff s factory, some of the Defendants and divers and sundry other persons, members of Union No. 5 and their associates and confederates, and as said employees were leaving for home, followed them, and in order to protect said employees of Plaintiff from intimidation and violence on the part of said Defendants and their associates and confederates, it became necessary for other persons to protect them and accompany them to their homes.

On said evening, to-wit: March 27, 1900, as William Hayes, an employe of Plaintiff, was leaving the factory of Plaintiff on a Third Street car, the Defendant George Ritter and two others of his associates and confederates, boarded the car on which said Hayes was a passenger, and surrounded said Hayes and endeavored, by threats and intimidation and persuasion, to induce him to quit the employ of Plaintiff and abandon the factory, and claimed that if he would quit, said Plaintiff would comply with their demands.

On the evening of March 28th, 1900, as William Hayes, an employe of Plaintiff, was leaving his work, the other employees of the Plaintiff in the polishing and buffing department having been let off by Plaintiff before quitting time so as to avoid the threats and intimidations of the Defendant William Orr, and other Defendants herein, and their associates and confederates, there appeared in front of and in the vicinity of Plaintiff's factory, the Defendants, William Orr, Harry High, Frank McGee and divers and sundry other persons, members of said Union No. 5, and their associates and confederates, in number at least two hundred, and surrounded and followed the said William Hayes, and endeavored, by threats and intimidation, persuasion and violence, to induce him to quit the employ of Plaintiff and abandon his contract with Plaintiff.

A mob of two hundred threaten an employee with assault.

Plaintiff further says, that the committing of the foregoing acts and things are not the only instances where said Defendant George Ritter and the Metal Polishers, Buffers, Platers and Brass Workers' Union No. 5, through its officers, agents or representatives and members, and others associated and confederated with them, have attempted by threats of boycott and intimidation and violence and persuasion, to drive Plaintiff's employees away and induce them to quit the employment of Plaintiff, and induce and prevent others from taking employment with Plaintiff; but Plaintiff further says, on information and belief, that said Union No. 5, through its officers, agents or representatives and members, and the other defendants, and others associating and confederating with them, have at divers and sundry times between October 9th, 1899, and March 28th,

Citation of threats, intimidation and violence.

1900, attempted, by threats and intimidation and violence and persuasion, to induce the employees of Plaintiff, engaged in the polishing and buffing department of said Plaintiff's factory, to quit work and abandon their contracts of employment with Plaintiff, and to induce others to refrain from taking employment with said Plaintiff, all of which acts and things so done by said Union No. 5, through its officers, agents or representatives and members and others associated and confederated with them, was done for the purpose of preventing Plaintiff from continuing its business, and thus force Plaintiff to submit to their demands.

Enforced suspension of work in Polishing Department.

Plaintiff further says, that on account of the threats and intimidation and violence, some of its employees, to-wit: Charles Furry, C. E. Kendle, Carl Werckmen, Lee Noell and Michael Mahan were induced and compelled to quit the employ of Plaintiff, and abandon their contracts of employment with the Plaintiff. Plaintiff further says that on account of the interference with the business and employees of Plaintiff working in the polishing and buffing department, by the threats and intimidation, and violence and persuasion hereinbefore fully set forth, in order to protect its employees from further threats and intimidation and violence and persuasion on the part of the Defendants herein, and their associates and confederates, it was compelled, on the 29th day of March, 1900, to suspend operations in its polishing and buffing department and lay off its employees engaged therein until the 6th day of April, 1900, and arrange for boarding and lodging its employees in said department in the factory of Plaintiff.

Employees boarded and lodged within the factory to protect them from assault.

Plaintiff says that on the 6th day of April, 1900, it again started its polishing and buffing department in its factory, by boarding and lodging its employees, or the larger part of them, in said factory. Plaintiff further says that on said 6th day of April, 1900, it, in writing, notified the Mayor and Board of Police Commissioners of the City of Dayton, Ohio, of its intention to resume the operation of its polishing and buffing department on that day, and demanded that its business and employees be protected from the threats, intimidation and violence of the Defendants and their associates and confederates, which request is in the words and figures following, to-wit:

Official demand for police protection.

DAYTON, OHIO, April 6th, 1900.

"*Hon. J. R. Lindemuth,*
Mayor of City of Dayton.

Dear Sir:—In consequence of the disturbances around our factory, and interference with and assaults upon our employees, we have thought it wise to lay off the men in our polishing department temporarily, and they have therefore not been at

work since Wednesday, March 28th. We have now set them at work again, and also put other men at work in that department, and we anticipate fresh trouble of a similar character to that which we have already had, with which yourself and the Police Department are familiar, and which is likely to be repeated this afternoon and evening. We, therefore, now notify you of our action in order that you may take such steps as, in your judgment, may be proper to preserve the peace and to protect the men in our employ from personal violence.

Very respectfully yours,

JOHN KIRBY, JR.,
General Manager."

And a letter in the same words and figures was sent to Elihu Thompson as President of the Board of Police Commissioners of the City of Dayton, Ohio.

An employee assaulted on street car Rescued by citizens.

Plaintiff further says that on the morning of April 29th, 1900, one of its employees, Edward Johnson, boarded a Third Street car going west and when he got on said car two men unknown to said Johnson, but who, Plaintiff is informed and believes, are certain of the Defendants herein and their associates and confederates, also boarded the car and endeavored by threats, intimidation, violence and persuasion, to induce said Johnson to quit working at the factory of Plaintiff, and assaulted and beat said Johnson and continued to do so until they were compelled to desist by others on the car, when they left the car and fled.

Attempted boycott.

Plaintiff further says that on the 30th day of April, 1900, the Defendant, James Whaley, and others of his associates and confederates, called upon certain persons engaged in business, and with whom Plaintiff has dealings, and endeavored, by threats intimidation persuasion, to induce them not to furnish or sell Plaintiff any supplies.

Nightly disturbance requiring police interference.

Plaintiff further says that during the nights of the week beginning April 30th, 1900, certain of the Defendants and divers and sundry other persons unknown to Plaintiff, in large numbers appeared and congregated in front of and around Plaintiff's factory and as Plaintiff is informed and believes, and therefore charges, so appeared and congregated there for the purpose of inducing the employees working in the polishing and buffing department of Plaintiff's factory to quit work by threats and intimidation and violence if necessary, to such an extent that it was necessary to have police protection, and for the purpose and with the intent of preventing Plaintiff from continuing its business, and thus to force Plaintiff to submit to their demands.

Plaintiff further says that on the forenoon of May 6, 1900,

the Defendant Geo. Ritter, and other Defendants and divers and sundry other persons associated and confederated with them, in large numbers, at least 100, appeared and congregated in front of and around Plaintiff's factory, and as Plaintiff is informed and believes, and therefore charges, so appeared and congregated there for the purpose of menacing, threatening and intimidating Plaintiff and its employees, thereby intending to induce and compel them by such appearance, congregating, menaces, threat and intimidation to quit the employ of Plaintiff and prevent others from taking employment with Plaintiff, and for the purpose and intent, as Plaintiff believes and therefore charges, of preventing Plaintiff from continuing its business, and thus to force Plaintiff to submit to their demands, and that it became necessary for the police force to disperse said Defendants last above named and their associates and confederates, in order as Plaintiff is informed, believes and therefore charges, to protect its employees from violence and its property from damage.

Police disperse a hundred Metal Polishers.

Plaintiff further says that during the early part of the night of May 9th, 1900, the Defendant Herman Eberle and divers and sundry other persons associated and confederated with him to the number of 100 or more, appeared and congregated in front of and arouud Plaintiff's factory and as Plaintiff is informed and believes and therefore charges, so appeared and congregated there for the purpose of menacing, threatening and intimidating Plaintiff and its employees, thereby intending to induce and compel them, by such appearance, congregating, menaces, threats and intimidation to quit the employ of Plaintiff and for the purpose and intent, as Plaintiff believes and therefore charges, of preventing Plaintiff from continuing its business and thus to force Plaintiff to submit to their demands, necessitating extra police protection to protect it employees from violence and its property from damage.

Police protection required during several nights. Employees in danger; Neighbors outraged.

Plaintiff further says that during the early part of the night of May 10th, 1900, the Defendants, Frank McGee and Dallas Kurfiss, and divers and sundry other persons, associated and confederated with them, to the number of 100 or more, appeared and congregated in front of and around Plaintiff's factory, and as Plaintiff is informed and belives and therefore charges, so appeared and congregated there for the purpose of menacing, threatening and intimidating Plaintiff and its employees and thereby to induce and compel them by such appearance, congregating, menaces, threats and intimidation, to quit the employ of Plaintiff, and prevent others from taking employment with Plaintiff and for the purpose and with the intent, as Plaintiff believes and therefore charges, of preventing Plaintiff from continuing its business, and thus to force Plaintiff to submit to their demands, necessitating

extra police protection for the preservation of Plaintiff's property and the safety of its employees.

Plaintiff further says that on the 11th day of May, 1900, Plaintiff, in writing notified the Board of Police Commissioners of the City of Dayton, Ohio, and the Mayor of said City, of the continued and threatened interference and disturbances, and threatened intimidation of its employees, and of the assembling of large crowds in front of and around its factory, and demanded protection of its employees and property, and that the continued intimidation and loitering in front of and around its premises be stopped; and that it also on the 12th day of May, 1900, renewed its demands in writing upon said Board of Police Commissioners of the City of Dayton Ohio, and the Mayor of said City, and in addition thereto notified the Commissioners of Montgomery County, Ohio, in writing, of the situation within and around its factory, and demanded that its employees be protected in their rights and that Plaintiff's business and property be protected from damage.

Demand made on County for protection.

Plaintiff further says that on the evening of May 12th, 1900, there was published in the Dayton Evening Press the following notice:

"All well disposed people, and especially Polishers and Buffers, are most cordially invited to attend the gospel meetings at the corner of Garfield and Third Streets, every Sunday morning at 10:30 o'clock."

That on the same evening, to-wit, May 12th, 1900, there was published in The Dayton Evening Press the following notice:

"There are gospel meetings held at the corner of Garfield and Third Streets, every Sunday morning, at 10:30 o'clock. All well disposed persons are cordially invited to attend, especially Polishers and Buffers."

That the place designated in said notices for the holding of said meetings is the location of Plaintiff's factory.

Notices in the press of the city, calling a meeting of Metal Polishers to be held at the factory Sunday morning.

Plaintiff says that on the same evening, to-wit, May 12th, 1900, and after the publication of said notices, the Defendant Edward J. Leo, Ex-President of said Union No. 5, and his associates and confederates were picketing and loitering in front of said Plaintiff's factory as late as 11 o'clock P. M.

Plaintiff further says that at about 9:30 o'clock A. M., May 13th, 1900, the Defendants Nicholas Duttle and others of their associates and confederates to the number of at least 100, pursuant to said notices appeared and congregated in front and around the factory of said Plaintiff, being the place designated in said notice, and thereupon Sargeant McBride, in charge of a number of police officers of the City of Dayton, Ohio, started to read what is known as the "Riot Act" to the Defendants named and their associates and confederates, and that the Defendants Nicholas Duttle, who seemed to be the spokesman of the others, requested said Sargeant McBride not to read said "Riot Act" and if he did not

The "Riot Act" read by police authorities at the Sunday meeting.

they would disperse and go to their homes. Relying upon their request said Sergeant McBride did not then read the "Riot Act" and in a few minutes the said Defendants last above named and their associates and confederates, disappeared and left.

Metal Polishers disregard the "Riot Act", violate their pledge and are arrested.

Plaintiff further alleges that said McBride, relying on the promises of said Defendant Duttle and his associates and confederates, left the premises with his officers, but Plaintiff says that within twenty minutes of the time when said McBride and other officers left, said Defendant Nicholas Duttle and his associates and confederates to the number of about 200 returned to the front of and around the factory of Plaintiff, and remained there until they were dispersed by the officers of the City and a number of them arrested; that the said McBride, the officer in charge, did, before said crowd all dispersed and left, read the "Riot Act" to them.

The President of the Metal Polishers on picket duty on Sunday.

Plaintiff further says that after said "Riot Act" so read by said McBride and in the afternoon of said day to-wit, May 13th, 1900, the Defendant Edward J. Leo, and others associated and confederated with him, were picketing, walking and loitering in front of and around Plaintiff's factory.

Walking Delegates, officers, strike committees and 240 other members of the Metal Polishers' Union conspired, combined and confederated to boycott Plaintiff, its business and its employees.

Plaintiff further says that the persons other than those named as Defendants herein who have been congregating and loitering in front of and in the neighborhood of Plaintiff's factory, and who have been following and surrounding its employees, and soliciting, menacing, threatening, intimidating and assaulting the employees of Plaintiff, and are also guilty of other threats and acts of intimidation as herein alleged, and who are guilty of such intrusion and interferance with the business of Plaintiff and interference with its employees, are unknown to the Plaintiff and are too numerous for Plaintiff to make them all parties to this petition and bill in equity; but Plaintiff avers and shows that the members of said Metal Polishers, Buffers, Platers and Brass Workers Union No. 5 of Dayton, Ohio, in so far as said organization and practices are unlawful and against the legal rights of Plaintiff, are in combination and are associated together in an unlawful enterprise, and that Plaintiff should not be obliged to make all said members of said association who may from time to time be guilty of such interference with the business of Plaintiff, parties to this Petition and Bill in Equity, but that Plaintiff should be permitted to proceed against the representatives of said Union No. 5, to-wit; the walking delegates, officers, strike committees, and such other members of said Union as may be known to Plaintiff, whose names may be ascertained from time to time, and who are guilty of the unlawful practices herein alleged.

Plaintiff further says that the said Metal Polishers, Buffers, Platers and Brass Workers' Union No. 5, of Dayton, Ohio, said

George Ritter and the officers, committees, walking delegates of said association and the other defendants herein, together with their associates and confederates, have been and are still wilfully and maliciously combining together in intimidating and threatening those in the employ of the Plaintiff from remaining in its employ, and that they have threatened several of Plaintiff's employees, particularly said Jerry Hawkins and William Hayes, with personal violence, if they continued to remain in Plaintiff's employ, and Plaintiff alleges and charges that the Metal Polishers, Buffers, Platers and Brass Workers' Union No. 5, of Dayton, Ohio, George Ritter, and 240 other Defendants, their agents, servants, associates, confederates and the committees, members, officers and walking delegates and representatives of the Metal Polishers, Buffers, Platers and Brass Workers' Union No. 5, of Dayton, Ohio, have conspired, combined and confederated, and are conspiring and combining to boycott Plaintiff and its business and its employees, by intimidation of persons dealing with Plaintiff, by visiting them at their places of business and threatening them with boycott in case they continue to trade with Plaintiff; by gathering in threatening crowds in the neighborhood of Plaintiff's factory; by threatening with violence employees of Plaintiff, intimidating and persuading employees of Plaintiff to break their contracts of employment with the Plaintiff, and quit the employ of Plaintiff, and generally injuring Plaintiff in its business and preventing it from carrying on the same, and that their acts in the premises have required the attendance of some policeman constantly for the last ten days in order to prevent violence and to enable Plaintiff in a manner to operate its polishing and buffing department and carry on its business, and that their acts in the premises have required Plaintiff to board and lodge in its factory most of its employees engaged in the polishing department of its factory since April 6, 1900, and continues to do so and protect them by officers in order to prevent personal violence on its employees, and enable Plaintiff in a manner to operate its polishing and buffing department and carry on its business, and Plaintiff alleges and charges that said parties last named, and if said members of said association and their associates and confederates, are allowed to continue the acts which they are now committing, or allowed to gather in threatening crowds in front of and around Plaintiff's factory, or allowed to interfere as they have, with the persons dealing with Plaintiff and with its employees, the business carried on by Plaintiff, which is a large one, will be seriously injured, if not ruined, for which it has no adequate remedy at law, and for which no adequate damages can be assessed.

The Plaintiff has set forth all the said acts of violence and

Plaintiff without remedy at law. Can only be protected in a Court of Equity.

intimidation as the basis of its application for a temporary injunction.

Plaintiff further says that it is entirely without remedy at law, and can only be fully protected and relieved in a Court of Equity.

Perpetual injunction restraining the Metal Polishers' Union from numerous violations of law incident to the outrages perpetuated on employees, asked for by Plaintiff.

Wherefore, Plaintiff prays that on the final hearing of this cause a perpetual injunction may be allowed and issued restraining the Defendant, Union No. 5, and its officers, agents and members, each and every one, Edward J. Leo, and the other 240 Defendants, and their associates and confederates, and all others that may act in concert with them or by their direction.

From in any manner interfering with the employees or officers of the Plaintiff now in its employ and from in any manner interfering with any person who may desire to enter the employ of Plaintiff, by the way of threats, personal violence, intimidation or other means calculated or intended to prevent such persons from entering or continuing in the employment of Plaintiff, or calculaled or intended to induce any such persons to leave the employment of Plaintiff.

From boycotting Plaintiff, either by threats, intimidation, persuasion or otherwise.

From interfering, intimidating, boycotting, molesting or threatening in any manner any person or persons for the purpose of inducing such person or persons not to deal with or to do business with Plaintiff.

From congregating or loitering about in the neighborhood of the premises of Plaintiff, or at any other places, with intent to interfere with the employees of Plaintiff, or with the prosecution of their business, or to interfere with or obstruct in any manner the business or trade of Plaintiff, and prevent or induce the public not to deal or trade with Plaintiff.

From picketing or patrolling the factory, or other premises of Plaintiff, or the homes or stopping places of its employees or approaches and entrances thereto, or loitering in or about any of the places named, or making loud or boisterous noises in the vicinity thereof, for the purpose of intimidating or interfering with the Plaintiff's officers, employees, business or property.

From interfering with the free access of employees of Plaintiff to Plaintiff's premises and their places of work, and the free and unmolested return of said employees to their places of business or their homes.

From impeding, obstructing or interfering with by boycott, threat or otherwise, any person from trading or dealing with Plaintiff.

From, by concerted action or otherwise, doing any act or causing annoyance which will interfere in any manner with the employees of Plaintiff or its business, or cause injury or damage to its business or property.

From giving any instructions or orders to committees, associations or otherwise, for the performance of any such acts or threats hereinbefore enjoined, and from in any manner whatsoever, impeding, obstructing or interfering with the regular operation and conduct of the business of Plaintiff, or the employees now in the employ of Plaintiff, or that may hereafter be employed by it.

And that, pending the hearing of this cause, temporary injunction may issue against the Defendants and all of them and their associates and confederates and all others who may be acting in concert with them, restraining them as above prayed for, and for such other and further relief as in Equity the Plaintiff may be entitled to on such final hearing.

GOTTSCHALL, CRAWFORD & LIMBERT.
McMAHON & McMAHON.
CHARLES H. KUMLER.
Attorneys for Plaintiff.

State of Ohio, Montgomery County, ss.

Verification by the General Manager.

John Kirby, Jr., being first duly sworn, says that the Plaintiff is a corporation; that he is an officer thereof, to-wit; its General Manager; and that the facts set forth in the foregoing petition are true.

JOHN KIRBY, JR.

Sworn to before me by the said John Kirby, Jr., and by him signed in my presence this 15th day of May, A. D., 1900.

C. K. McCONNAUGHEY,
Notary Public in and for
Montgomery County, Ohio.

[Seal.]

Order of the Court.

Let a temporary injunction issue as prayed for until the further order of the Court.

ALVIN W. KUMLER, JUDGE.

Bond $1,000.00.

Mr. OSCAR M. GOTTSCHALL FOR THE PLAINTIFF.

If your Honor please, in coming to the argument of this case, on behalf of the plaintiff, the counsel are strengthened and supported in their views of the law and the principles applicable to the questions involved in the case, by a long array of authorities, which seem to be unanswerable. The principles which will govern the determination of this case are so well established by the decisions of the highest courts of most of the States of this Union, and universally by the highest tribunal, the Supreme Court of the United States, that it does not seem possible to controvert them. These principles being so well established and supported by the long array of authorities, it is hardly possible for me in the opening to even cite the authorities upon which we rely, much less to quote at any great length from any number of them.

Principles Established.

In view of the principles determined and set forth by these authorities, and the personal and property rights involved in the determination of a question of this kind, it seems very strange that in this age and at this time, Courts should be called upon to exercise their powers over citizens within their jurisdiction, to restrain them from committing unlawful acts, and to prevent them from interfering with the rights of their brother man, rights which are guaranteed to every American citizen by the Constitution of the United States; rights which are guaranteed to every citizen of Ohio by the constitution of the State; rights that were first presented to the world in the immortal paper, the Declaration of Independence, in the words:

Provisions of the Declaration of Independence.

"We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness; that to secure these rights, governments are instituted among men."

These are the rights, if your Honor please, which embrace the right to live as an American citizen; the right of liberty, to do that which he may do under the law and within the law, and in the pursuit of happiness, pursuing that course in life which shall best satisfy him and best redound to his interest and to his pleasure. Among these rights is the right of property. Among these rights is the right of liberty; the right of every man to receive for his labor fair and just compensation.

Adam Smith says, in reference to this right of property in labor:

"The right which every man has in his own labor, as it is the original foundation of all other property, so it is the most sacred and inviolable. The patrimony of the poor man lies in the strength and dexterity of his own hands; and to hinder him from employing this strength and dexterity in what manner he thinks proper, without injury to his neighbor, is a plain violation of this most sacred property. It is a manifest encroachment upon the just liberty both of the workman and of those who might be disposed to employ him. And as it hinders the one from working at what he thinks proper, so it hinders the other from employing whom they think proper."

With these rights thus established and confirmed, with these rights guaranteed to every American citizen, what right has any man, or any set of men, or any combination of men, to say to any other brother man, "You cannot work unless you belong to our organization; you cannot work unless you are a union man, if you do work, you are a scab and subject to assault."

The famous Slaughter House Case.

The Constitution of the United States guarantees all of these rights, and, in the famous Slaughter House case, in the 16th Wallace (36-120), Justice Bradley, in his dissenting opinion, says:

"For the preservation, exercise and enjoyment of these rights (life, liberty and the pursuit of happiness), the individual citizen, as a necessity, must be left free to adopt such calling, profession or trade as may seem to him most conducive to that end. Without this right, he cannot be a free man. This right to choose one's calling is an essential part of that liberty which it is the object of the Government to protect; and a calling, when chosen, is a man's property; and right, liberty and property are not protected where these rights are arbitrarily assailed."

"This freedom of action lies at the foundation of all commercial and industrial enterprise. Men are willing to embark capital, time and experience therein, because they can confidently assume that they will be able to control their affairs according to their own ideas when the same are not in conflict with law. If this privilege is denied them, if the Court cannot protect them from interference by those who are not interested with them, if the management of the business is to be taken from the owner and assumed by, it may be, irresponsible strangers, then we will have come to the time when capital will seek other than industrial channels for investments, when enterprise and development will be crippled, and the factory and workshop subject to the uncertain chances of co-operative systems."

Rights of employees within certain limitations conceeded.

No one questions the right of these defendants, or the right of any man, or any company of men, to combine for the purpose of bettering their condition. And so long as they keep within the pale of the law, so long as it is a question of wages and hours, that question can be settled without the interference of Court. But when, in order to effect their purposes; when, in order to obtain employment, they seek to assault men and destroy property, then it is that the strong arm of the law is put over them, as it was in this case, and says to them, "No! You

have rights, but other citizens have rights, and so long as you work and labor and do not interfere with the rights of anybody else, you will be protected; but when you undertake to interfere in any manner, by assaults or by any other means, in the labor of another man, or the property of another man, that moment the law says to you, "You must stop."

Arbitrary action of labor Unions.

There is nothing so arbitrary as a Labor Union. There is nothing that so compels its members—I would almost say—to lose their manhood; that compels them, upon a difference, to leave their work bench and deprive themselves and their families of their earnings and go out upon a strike; that compels them, when one of their members is discharged, to go out and picket a factory; that compels them to go down into their pockets for an assessment to pay for picketing. It is the most arbitrary, the most perfect combine and trust that there is in the country to-day.

Labor Unions violate the Anti-trust law.

They are trusts under the laws of Ohio, the same as any combination of capital, and the Court says, in the case of State vs. Jacobs in the May 7th, 1900, Weekly Law Bulletin, in reference to the anti-trust law, page 261.

The Valentine Anti-trust law, so called (93 O. L. 143), which provides that 'a combination of capital, skill or acts by two or more persons, firms, partnerships, corporations, or associations of persons, or any two or more of them, to create or carry out restrictions in trade or commerce are illegal'; and that 'violation of either or all of the provisions of this act 'shall be and is hereby declared a conspiracy against trade,' and is not in violation of the constitution, but is valid in law."

"While it may be conceded that the controlling purpose in the mind of the legislature in enacting this Statute was to suppress and control such organizations as are known as trusts and monopolies, yet the statute is made so comprehensive and far reaching in its express terms as to extend to like incidents and acts clearly within the expression and spirit of law. It declares that 'any combination of capital, skill or acts by two or more persons, firms, partnerships, corporations, or associations of persons, or of any two or more of them, for either, any or all of 'the following purposes shall constitute a trust.' The first purpose named is 'to create or carry on restrictions in trade or 'commerce.' Therefore any combination or confederation among two or more persons in restraint of trade or commerce comes within the express letter of this act."

"A combination by two or more persons for the purpose of boycotting a third persons is a violation of the provisions of this act and is a conspiracy against trade, within the definitation thereof as defined in said act."

"In prosecution for boycotting under this act it is sufficient to prove that a combination as defined therein existed, and that the defendant belongs to it, without proving all the members belonging to it, or proving or producing any article of agreement or any written instrument on which it may have been based, or that it was evidenced by any written agreement at all. The character of the combination alleged may be established by proof of its general reputation as such."

"Where several persons are proved to have combined together for the same illegal purpose, any act done by one of them in pursuance of the

original concerted plan, and with referenc to the common object, is, in the contemplation of the law, the act of the whole party, and therefore a proof of such act will be evidence against any one of those who were engaged in the conspiracy.

Now, if your Honor please, we are more convinced of the righteousnes of our cause, more convinced that the proper course was pursued by this court in allowing a temporary injunction, from the fact that from the time the original injunction was allowed or granted, February 12th, 1900, up to the time when that case was settled and dismissed, March 8th 1900, there was no trouble, no disturbance, there was no interference whatever with the employees at the factory or with the business of the Plaintiff. And further, that from May 14th, 1900 when the present temporary injunction was granted, to the present time, so far as we are able to learn from the testimony, and so far as we know from the outside fact, there has been no disturbance, no picketing, no crowds, no threats, no destruction of property, no intimidations of the employees of the Dayton Manufacturing Company.

Injunction effective in suppressing disorder and violence. Defendants obey the order of the court.

If your Honor please, that shows the strength of the law, and it shows that these men recognize the power of the law; that when this Court said they should not commit any of these acts, they as law-abiding citizens, immediately stopped, but it was the power of the Court that did it. As in the famous Debs case, one of the defendants testified, "It was not the soldiers that ended the strike. It was simply the United States Courts that ended the strike." "Not by the army, not by any other power, but simply and solely by the United States Courts restraining us." And the Court in that case says that the men showed their obedience to the laws when they knew the Court had so spoken.

These temporary injunctions, therefore, having proved effective; none of the rights of these defendants, or any of the citizens of Montgomery County having been interfered with by these injunctions; no right of these men to labor having been curtailed; they and their associates, and all the citizens of this County, have obeyed that order of the Court, and that is a very strong argument; almost a conclusive argument, that the temporary injunction thus allowed in these two cases having had such an effect, which ought to have been the result of every man's own ideas of right and wrong; which ought to have been observed by them as law-abiding citizens, is very pertinent evidence for the decreeing of a permanent injunction in this case.

Hence, not infringing the rights of any man, the Court has the right and power not only to enjoin this union, not only to enjoin the men who are shown to have been there, not only to enjoin all the members of the Union, whether they were there

or not, but every other person, including their associates and confederates.

The Defendant Union is an unincorporated body whose constitution declares:

Objects of the organization and pledge taken by members of Union.

"The object of the organization shall be to encourage all persons working at our craft to become union men; try and procure employment for the unemployed; to maintain a fair and equitable rate of wages; to uphold our rights as citizens, and try to settle our grievances by arbitration."

The pledge taken by every member of the Defendant Union at the time of admission, and which governs the conduct of these men as members of that Union, is as follows:

"I do solemnly promise on my honor as a man that I will not reveal to any person or persons any business or proceedings of any meeting of this Local unless by order of this Local, to any but those I know to be in good standing; and I further promise to the best of my ability to abide by the By-Laws and Constitution and prices of this organization, and I will at all times abide by the decision of the legal majority; I will use all honorable means to procure employment for the members of this organization in preference to others; I will not wrong a brother or see him wronged if in my power to prevent. I do further promise to assist a brother of this organization when and wherever I may find him in distress."

That is the organization; the object of the organization, and the pledge of each of these defendants and of each member of this Union, to which, if they would confine themselves to their legitimate rights, there can be no objection on the part of any man.

Proceedings instituted by the Union to unionize the factory. An organizer imported for this purpose.

They have a perfect right to say for what wages they will work; they have a perfect right to say whether they will work or not work for any particular person. They have a perfect right to make demands for higher wages and shorter hours. They have a perfect right to assist their brethren. They have a perfect right to obtain members for their organization, but when they exceed those rights, when they go beyond their power and try by force to compel men to come into their Union, or by force to compel men to quit work when they have made contracts for work, then the organization is detrimental to the general public.

The minutes of this Union for 1899, prior to the discharge of these men, will show that from September 20th, 1899, up to October 4th, 1899, that of the sixteen men that were dischaged on the 9th day of October, nine of them were initiated into this organization between September 20th 1899, and the 4th day of October, 1899. The minutes will show under the date of October 4th, 1899, that,

"It was moved and seconded that polishers and buffers of Dayton Manufacturing Company appoint a committee to find out how much they are going to be paid."

What was the object of that, if your Honor please? Do you suppose that these men, some of whom had worked there for years, didn't know how much they were getting paid? Do

you suppose that Albert Eberly, one of the defendants here, who returned on the 11th day of October, 1899, to work for the Company, who was sent for from New Orleans, and arrived here and was reinstated in the Union on October 6th, 1899, didn't know what wages he was going to get, and what he was to be paid for his labor, when he had a contract as to what he should do, and the wages he was to be paid? That Brigman didn't know what he was going to be paid? That Dryden and Kissinger didn't know what they were being paid? And this man Sullivan and Charley Yahn, and Stebbleton who were received and initiated in this Union on October 4th, 1899, didn't know what they were being paid?

On the Minutes, under date of October 4, 1899, appears a motion, that

"The brothers of Dayton Manufacturing Company live strictly up to business and the constitution."

Prior to October 9th, 1899, a committee consisting of Leo and two others, members of the defendant Union, called to see Mr. Kirby at the factory, and not meeting him, called again at the factory, and also at his home. Now, if your honor please, right before the discharge of these men, we have these facts which are the written evidence of the defendants themselves, and we have in addition to that the fact, as Mr. Kirby testified, and it was not contradicted, that Eberly said to him that Orr was brought from Cincinnati for the purpose of unionizing the shop of the Plaintiff.

Organizer brought from Cincinnati for the purpose of organizing Plaintiff's shop.

The fact stands that Orr had come from Cincinnati but a short time before these occurrences took place, and sought employment and was employed at the Dayton Manufacturing Company, and that on October 9th, he, it was, that said to Stewart,

'Mr. Stewart, that man (pointing to Dummy) can't work here any longer. Mr. Stewart, we have all sworn to stand together, and that man shan't work here any longer."

Orr had been a member of this union prior to this time, because on October 4th, Holt, Orr and Rader were re-instated. The other men were initiated. Orr and Rader who worked there were re-instated. Brigman and the rest of them, eight others, were initiated. That made eleven out of the sixteen that were discharged on the 9th, that were taken into this Union for some particular purpose on the 4th of October, five days previous to the discharge, and then a committee was appointed at a meeting of the Union to ascertain what these men were being paid, or going to get paid. What does that indicate? It indicates, as stated by Orr, or as stated by Mr. Kirby, that Orr said he (Orr)

was brought here to organize that shop—that department. What did they mean by that? They meant it should be controlled by the Union, that none but union men should work in that department; that a committee should be appointed who should control and discharge and employ the men, leaving to Mr. Kirby the very pleasant duty of not having anything to do or say about the business of the Company, except to pay the pay-rolls and other bills that might come in for that part of the factory.

It shows the starting point of all this trouble. On October 9th, the committee, consisting of Leo, the President of the Union, and two others, had been there twice to see Mr. Kirby. This committee had been appointed by the Union to find out what the brothers in the Dayton Manufacturing Company, were going to be paid, but they hadn't met Mr. Kirby. Then Orr, in pursuance of the plans and combination, stirred up the matter on the morning of the 9th. It was no lockout, because the minutes of the Union show that from October 9th, 1899, to May 14th, 1900, at least a half a dozen resolutions were offered to declare this a lockout, and were lost. It was not a strike. The men had not struck for higher wages. They had made no demands. It was simply a discharge, and yet these men, this Union, every one of these defendants, bound as they are by their oath to abide by what the majority said, commenced at once to picket and annoy the people around the factory.

Men were discharged. No strike or lock-ont, yet the Union stationed pickets at factory.

I desire to quote exactly the language that Orr used on the morning of the 9th. Orr said to Stewart,

"Are you going to allow that dummy to work for you?"

Stewart replied,

"Any one can work in this room as long as they are not objectionable to me."

Orr said,

"Mr. Stewart, I might as well be candid with you. Every man in this room is sworn to stick together, and I have been put here as spokesman. It ain't a very pleasant position to be in, for I will be blamed for it all, but somebody has to do it, and we do not want any trouble. But we cannot work with that man."

There was the ultimatum. What had they the right to do? They had the right, if they did not want to work with that man, to quit. That would have been the manly thing.

It was not a strike. It was not a lockout. Their own minutes confirm that. It was a discharge of these men, and when Mr. Kirby, in pursuance of the rights which he has as an American citizen, said to Brigman and Orr and Stebbleton, Sullivan, Rader, Kissinger and others, "I don't want you to work for me," then it was their business to walk out—take their tools

Minutes of the Union show men were discharged and did not strike.

and leave the shop. Did they do it? Two of them took their money, and the rest of them came back on Wednesday following and said that they understood it was just a "lay-off."

The Union did not understand it that way, for on October 9th, they held a meeting, and the Minutes show that

"Brother Orr reported all brothers employed at the Dayton Manufacturing Company were discharged until such time as the Company saw fit to hire them back."

And yet the discharged men testified in this case that Mr. Stewart said to them,

"We are going to make repairs, and will have to lay you off for a few days."

The truth of what occured on October 9th, at the Dayton Manufacturing Company, is contained in the report of Orr to the Union. They were discharged until such time as the Company saw fit to hire them back.

What next? At the same meeting the following is passed:

"That a lockout committee be appointed to picket the shop, to keep all polishers out, and to notify the local executive board at once."

What right had these men to declare that they will picket the shop and prevent polishers from entering the Dayton Manufacturing Company? Where did they get their authority? There is no warrant in law or morals for the posting of men to watch a particular factory, or a particular building. What was it done for?

To prevent polishers from entering that shop. How prevent them? It does not say that, but we have evidence enough of how they had been prevented, or tried to be prevented, from entering the shops.

"Resolved, That Brother Eberly can stay in the shop but do no polishing."

Brother Eberly had had his expenses paid from New Orleans; had signed a contract with this Company; had commenced work there on the 9th of October, and this Union graciously says, "Brother Eberly can work there." What at? He is employed as a polisher. He is a polisher, and probably knew nothing but one trade. But they dictated to him, and they dictated to this Company that he could not do this work. They can pay him his wages but he can't do any polishing.

The minutes show further action, as follows:

"All brothers involved in the trouble stay out, and get instructions from the executive committee."

"That all firms doing the work of the Dayton Manufacturing Company be allowed to do it until such time as it is necessary to stop it."

Union presume to dictate policy of other factories.

Union No. 5 saying to the firms in Dayton doing polishing work, "You can do polishing work of the Dayton Manufactur-

ing Company until such time as we say you can not." Is that the right of any man?

And when it comes to that, how quickly these very men, if anybody would attempt to interfere with them in the exercise of their right to work and to receive the pay for it, would rise up to arms, as they would have a right to do, and enforce their rights. As long as it was necessary, or as long as they saw fit to let them do it.

"This trouble be left to the brothers involved and local executive committee."

"Brother A. Gulde was appointed chairman of strike, Brother Orr assistant chairman, and Brother Brigman, Secretary."

There we have the organization. The next day, pickets appeared at the corners. There is no doubt of that. It is admitted by Mr. Ritter and Mr. Gulde and Mr. Blashfield, and one remarkable thing about Mr. Blashfield's testimony is the fact that these men working as they do for the strike wages they receive, have money to spend for nothing. They pay Mr. Blashfield for four hours strike time, for going out to the corner of Third and Van Lear Streets, to pay four men strike wages.

This continued until the first injunction. These pickets were there day in and day out, and if your Honor will take the trouble to examine, you will find where the strike wages are paid, and strike expenses are paid, until it amounts to a large, considerable sum of money.

Plaintiff refuse to treat with committee representing the union.

After this picketing commenced, as shown by the testimony of Messrs. Stewart, Raymond, Hendricks, Emmons, Coulton, Spencer, Kirby, Barlow and Ed Kirby, and when this committee consisting of Messrs. Leo, Gulde and Langtry, appeared and interviewed Mr. Kirby in reference to the troubles out there, he called their attention to the pickets, and Leo admitted it on the stand, and Langtry admitted it and Gulde admitted it, that he called their attention to the pickets, and the condition of the men, and called their attention to the fact that he would have no dealings with them, or the men, until these pickets were removed, and impressed upon them the fact that he would have no dealings with them as a Union, or as representatives of the Union, at any time or at any place.

On October 10th, committee of union consisting of Leo and two others, called on Stewart. Leo said:

"What do you call it,—lay off or lock out?" Stewart said, it was a discharge. They also called upon Colton.

On October 12th, they all came back to work, claiming they didn't understand they were discharged. That was another

scheme. I don't know who put them up to that, but here is the record, showing that Orr reported that they had been discharged, and that they understood on the evening of October 9th they were discharged, and yet they claimed in their interview that they didn't understand that they were discharged.

On October 12th, Leo and two others have an interview with Mr. Kirby. And on October 12th, it will be found in the minutes, at a special meeting of the Union, a report of shop committees was made as follows:

"State that they were advised to go to work. State that the foreman discharged all the brothers and would not discuss the matter."

Report of Local Executive Committee :

"State that they had an interview with Mr. Kirby and he promised he would give all the brothers a trial."

And then on Motion :

"All brothers to go back to work as they are hired until some one else is hired."

They wouldn' let anybody else work there unless it was agreeable to them. Then a motion :

"To allow no work to be shipped to be done while any brother is out of work."

It brings us back to the same question. What right had they to control these men?

"Fix the limit of brothers at the Dayton Manufacturing Company at $3.00 per day."

Motion,

"Journeymen to be given preference in being hired back."

Motion,

"That the men go back, and if the apprentices go back, fix the prices so that Journeymen can make $3.00 per day."

Now, that is the report of the situation on October 12th.

On October 13th, Mr. Kirby had an interview with the discharged men. There was no promise on the part of Mr. Kirby to take all of the men back. The local committee stated that they had had an interview with Mr. Kirby and he promised to give all the brothers a trial.

The testimony of Mr. Kirby was, that under no circumstances would he take back certain of the men. On the 13th, he had a meeting with the discharged men, whether all or only a portion of them he could not say. They were all notified, but whether they were all there or not, the entire number, he is unable to say. But he called them there, and he submitted a contract to them and let them read it. The contract provided simply for the continuance of men in the position for two years, and provided for the payment he was to receive, with the proviso that he could

quit, or they could discharge him if it was deemed best. But it contained this proviso which was at war with the members of the Union, viz:

Part of contract submitted.

"That said party of the second part in accepting employment hereunder admits and agrees to at no time deny the right of said party of the first part to conduct and manage its business in such lawful manner as it may select or choose to do and without let or hindrance from any person or persons whatsoever; that he will not at any time, or on any occasion, whether he be in the employ of said party of the first part or not, during the period of time for which this agreement is made, either by word, act or deed, or in any manner whatever interfere with, obstruct or attempt to obstruct the management of the affairs or business of said party of the first part; and that he will not influence any other person or persons against entering the employment of, or serving in any capacity, the said party of the first part."

Is there anything wrong about that contract? Is there anything that takes away any of the rights of any man that signs that contract? Is there anything in the contract that lowers the manhood of any party entering into it? It was put into the hands of the Stebbletons and they read it. They wanted a copy to submit to their executive committee. Mr. Kirby very promptly said to them that he was dealing with them as individuals, and that he would not have anything to do with the executive committee, or the Union, and that they could not have a copy to submit to the executive committee.

In reference to that contract, on October 18th, there was a meeting of the Union, and the minutes contain the following:

"The Committee state the firm wishes them to sign a contract, and no brother will be hired back until they sign the contract."

Motion,

"All the work of the Dayton Manufacturing Company done in the various shops be stopped, all work being done, finished, and refuse to do any more. Lost."

That is October 18th. The minutes further disclose a motion,

"We leave this matter progress as it is going until such time as seven brothers in good standing see fit to call a special meeting."

On October 20th, Eberly quit, although he had signed the two years' contract. He had worked there, commencing on October 9th, and worked up to the 20th, and he quit. Why? Because of the trouble with the union men.

Plaintiff's work boycotted in other factories by order of the Union.

From that time, the work of the polishing department was done by Bates Bros., Pasteur Filter Company, Jordon, and some sent to Cincinnati, and some sent to Hamilton. Leo and Mr. Gulde testified that they went to these shops and told them that they could not do the work of the Dayton Manufacturing Company. Mr. Kirby testified that Bates Bros. notified him that a

committee had been to visit them, and they could do no more work than that which they had on hand; that the next day or two, this committee went back and said that these men could do the work. But there was an arbitrary exercise of power wrongfully.

This Union had no right to stop the work of the Dayton Manufacturing Company being done by these other people, and they were materially interfering with the business of the Dayton Manufacturing Company. George Loftus, the colored man, who drove the wagon for the plaintiff, testified that they got upon the wagon and drove with him ten or twelve times; that they interfered with his unloading at Bates Bros.; that he did unload, and they appeared to be making memoranda on their books as to the marks on the boxes.

This was all in accordance with the plans of this Union to force the Dayton Manufacturing Company to employ and discharge men as it might dictate.

The committee went into these shops and did stop them, as they testified to themselves, and the work was stopped. It is immaterial whether the Union passed the resolution or not. The fact remains that they boycotted this work in the factories of this town, and then only revoked the order when the discharged men, some of them, were employed in these factories, and worked upon this same work.

Then the Company sent some machinery to Hamilton—sent Barlow to take charge of the work there, and the work was done there and at Cincinnati, and at different places.

October 25th, a special meeting of the Union was called in reference to the trouble at the Dayton Manufacturing Company. Report of committee stated:

"That there are no signs of brothers going back. Company is having their work done in outside shops, and also state that the brothers can go back if they sign the contract."

Motion,

"This local stop the work of the Dayton Manufacturing Company done in local shops and all the cities, all the work half done, finish it, and do no more. The Secretary to notify all locals.

Motion,

"This local advance each member involved in this trouble $10.00 as strike pay.

October 26th, work boycotted in Dayton jobbing shops. Admitted by Leo and Langtry.

Is that the object of this Union? Does their constitution provide for any such thing as that? Does it provide for boycotting and picketing? Does it provide for threats? Does it provide for assaults? It does provide for an honorable organization

Constitution of the Union violated by resolution ordering picketing and boycotting.

which can work out good for its members and good for society, when they cease the unlawful acts and doings that they have exercised in the past. They know it is unlawful to boycott anybody in his business or in his dealings.

On October 27th, Messrs. Leo and Lynch called on Kirby, and they discussed the matter as individuals, because Mr. Kirby said to them that he would not discuss the matter with them as representing the International Union or the Dayton Union, and he again called their attention to the pickets upon the corners—the men of this Union, this Local No. 5, watching and waiting and peering around this factory of the Dayton Manufacturing Company—and for three or four hours they discuss this discharge of the men, this employment of Union men, and it is not because they are Union men, but he will not deal with the Union and they go away. He sticks to that contract. They read it, and at the meeting of the Union which followed—special meeting called November 4, 1899, in regard to the Dayton Manufacturing Company—was read the

Contract approved by president of the Inter national Union, condemned by the local because it did not recognize the Union.

"Report of E. J. Lynch, which stated that he and President Leo visited the Dayton Manufacturing Company. President Lynch after persuasion got to see the contract. He stated he thought the contract could not conflict with the Union. Mr. Kirby stated he intended to have his work done outside."

Now, where is the fault? Where is the trouble? Those men are discharged from the factory, from the polishing department, on October 9th. On October 13th the contract is submitted to them which they can sign and go back to work. On October 27th, this contract is submitted to Mr. Lynch. He is President of the International Union, and to Mr. Leo, the then President of the local Union, and Mr. Lynch says, "There is nothing in that contract to interfere or conflict with the Union."

Why did not they sign it then? Simply because it did not recognize the Union; simply because it dealt with each man as an individual; simply because it reserved the right to Mr. Kirby to employ whom he pleased, and at what wages he pleased; simply because it bound the men who signed the contract not to interfere with the plaintiff's business. And yet, while it did that—nothing that interfered with any of their rights, a contract which was acceptable to the President of the International Union, which he so reported to the local Union—yet they would not go back to work. They would not sign the contract. Because they were determined, as Orr said, that neither the "Dummy" nor any other non-union man could work in that factory.

On December 4th, Petty was put to work in the polishing department. They put him to work cutting buffs, and finally put him in the polishing department, doing something at the wheel.

There is no dispute as to the fact of his working at the wheel. There is no disputing the fact that three men met him and talked to him about it, because he so testified as a witness for the defendants. There is no questioning the fact that he said to Mr. Kirby that he had to quit because he did not want to get his block cracked, because he testified to it himself. He said he did not say the committee said so; Mr. Kirby did not say so; he said he had to quit because he was afraid of getting his block cracked.

Employee quit work because he was "afraid of getting his block cracked."

Why was he afraid? As he explained it upon the stand, because if another man had been scabbing his job, he would feel like cracking his block. So there was an interference somehow by three of the polishers, which caused his quitting the job.

Things went on there in the factory and around it; the picketing continued, and more or less watching around. No one was employed in the polishing department then except Mr. Hays and Mr. Stewart, until December 4th, when Petty was employed. Petty quit in a few days, and that left these men. The department remained in that condition until February 1st, when Hawkins was employed. He went to work in the polishing department under a contract.

On February 2, 1900, Hawkins having been employed on Februarv 1st, Eberly, Brigman and another of the defendants, visited the shop at noon time, and they admit they saw Hawkins there and talked to him, and at quitting time they waited for him. And at that time, who were there? Brigman, Eberly and Hole. And when Hawkins went out they surrounded him, and when Mr. Kirby went out Brigman opened on him with a volley of abuse, and a crowd gathered there. Now, it is true that a number of that crowd were employees of the Dayton Manufacturing Company, but the crowd gathered because of the annoyance and the excitement created by Brigman, Eberly and Hole, who were there waiting for Hawkins. And they abused Mr. Kirby. Finally Mr. Atherton, another of the defendants, came across the street and took these men away, and the crowd quietly dispersed.

Employees threatened and intimidated

On February 6th, Hawkins was followed home by Brigman and Kissinger and made an appointment for the next evening. On February 7th, Brigman took Hawkins to Polishers' Hall to meet the executive committee. That has been testified to by Brigman, Gulde, Ritter and two or three others, that they saw Hawkins at the meeting of the polishers, in the ante-room of the hall.

February 7th,

"Motion to appoint a special committee to investigate why they are

Special policemen appointed by police department to protect employees and property. Union protests.

swearing in special police to work in Dayton Mfg. Co. A. C. Gulde, Dutle, E. J. Leo, Committee."

"The following brothers were appointed on the boycott committee: John Braun, D. P. Ryan and thirteen others."

Gulde, Leo and Dutle are the committee to visit the police commissioners about the appointment of special police at the Dayton Manufacturing Company. They at once become very much interested in the morals and safety of the people out at the Dayton Manufacturing Company. They had heard something about Hawkins, and he was not the proper man to carry a gun. He had been sworn in as a special officer. Was it any of their business to determine who should be employed as a special officer out there? The record shows how these policemen are appointed.

The record shows that at this time special police were appointed at other places—for the People's Railroad, for the Ohio Rake Company and for other places. Did they interfere there? Was it any of their business that these special policemen were appointed? No, they passed that by, but the Dayton Manufacturing Company—the company that discharged sixteen of their members, the company which they were picketing, the company whose employees they were following and threatening—that was the company that was not to have protection.

What does Mr. Kennedy, one of the Police Commissioners, say in reference to this business?

"There was a committee of three, or possibly four, I know there were three, that came to my office, relative to appointing a special police; there was some trouble out there. We were informed that there was some trouble there, and we were having calls at other parts of the town, and we appointed a special officer. They protested against any special officer because it would add that much more expense on the city to maintain."

What an absurd idea, when the provision in the law is that the company having the special policeman appointed shall not only pay ten dollars for the appointment, but shall pay the special officer, and the City is under no obligation at all, but rather reaps a revenue from the appointment. They said there was no occasion for it, there was no trouble there. No trouble at all, only picketing, only threatening, only meetings of this union time after time, discussing the trouble at the Dayton Manufacturing Company.

On February 10th, 1900, the trouble in Maywald's saloon occurred. Hayes and Hawkins, employees of plaintiff, go down there, and Orr and Brigman and two or three others of the defendants, follow them in, and there it is, Orr makes the threat. He says to Hawkins:

"You are a pretty special officer. I will make you use that gun. Are you going to work there?"

And Jerry makes the remark he is going back to work, and Orr says:

"I will give you a job in the hospital, where you will get three meals a day, and I will go to the workhouse."

No trouble existed out there. Brigman is the Secretary of the strike committee. What was the object of Orr who was the Assistant Chairman of the strike committee, in threatening this man, whom they designated as a "scab", and who said they would get him a job in the hospital? Brigman was there, Orr was there—had been on picket duty. Brigman had been on picket and followed these men into the saloon, and there they acted in concert. They were acting in pursuance of the plans and under the direction of this Union; they threatened this employee of the Dayton Manufacturing Company, and endeavored, by those threats, to get him to leave the employ of the company.

On February 10th, Charles Yahn told John Freed that they would allow no one to work in the polishing room while they were out. Mr. Munch, lock maker there, was told by Rader he had better not do any polishing there. Rader is another discharged man, picketing there. February 12th, Meeker commenced work, and upon that very day, it was necessary for Mr. Kirby to take Meeker and Hawkins home in his buggy to protect them from the crowds and pickets that surrounded them.

Then there is a period of rest. On February 12th, injunction proceedings are commenced, and a temporary injunction allowed, and until the 8th of March, there is no interference,—nothing done. On the 13th of February, a special meeting of the union is called.

Injunction proceedings instituted and temporary injunction allowed.

"Leo stated that there was an injunction filed against the M. P. B. P. and B. U. of N. A., Local No. 5, and read the same. Committee appointed to investigate the Dayton Mfg. Co. having special police sworn in made full report."

Motion,

"Committee of three be appointed to write up the full report from the time of trouble and publish the same."

"Committee, Bros. Blashfield, C. Brigman, Ed. J. Ryan."

Motion,

"An assessment of 50 cents be levied on all brothers working to pay expenses of injunction."

Motion,

"Bro. Brigman be appointed a committee of one to go to see Mr. Hallanan, get $50.00, and tell him to proceed with the case."

Then, your Honor, there was published in the newspapers, and there was published in the Metal Polishers' Journal, an article written up by the committee, composed of Blashfield and others, which is found in the March number, 1900, of the Metal Polishers' Journal. Mr. Blashfield and Mr. Brigman admit the

fact that they were appointed upon the committee, and that they did write the report, and that a copy of it was sent to this Journal, and this Journal gives it, "Report of Local Committee,"—containing the statement of the case by the Local Committee, and winding up with this language, (on page 623), "and to sum up the matter in a nut-shell, we believe that there are a few men in this city who desire to test the strength of organized labor "

A matter of strength,—a matter that is to be determined by these men, whether or not a man shall run his business; that they will do anything, they will picket and threaten and they will boycott. Here we find scattered throughout this city cards, stating that certain work is done by "scabs," and containing skull and cross bones, and we have other cards circulated here, known by every man that takes an interest in public affairs, that by the means of these they think to intimidate the manufacturers of these articles, and they glory in the article of February 19th, that "there are a few men in the city who desire to test the strength of organized labor." Well, they have learned that there is one man who will test "the strength of organized labor," and by the powers of the Court, under the rights guaranteed by the Constitution, under the laws of this land, this plaintiff has obtained protection from the annoyance and troubles caused by this Union, that by its members sought to intimidate him and his employees.

Union proposes to test the strength of organized labor in Dayton.

March 8th, the first injunction was dismissed. During all of this time, there was no pickets, no interference, nor trouble in any way. Hawkins, Meeker and Bromley went to their homes, and returned. There is no interference at all from February 12th, to March 8th, and then what occured?

Compromise dismissal of injunction proceedings, the provisions of which, were at once violated by the Union.

On March 8th, they had a meeting of the Union, page 249 of the minutes:

"Ed. J. Leo made a report of the injunction suit of Dayton Mfg. Co., against No. 5; he stated that the attorneys on both sides got together and made a settlement without going to trial."

Then immediately followed the picketing. Then on March 22nd, Meeker, Furay, Kindle and Brownlee were stopped on Third street, opposite Beckel, by the discharged polishers, Orr, Brigman Kissinger and others. That is sworn to by Meeker and by Mr. Kirby, and admitted by Brigman, that these men were stopped and talked to in reference to their working out at the Dayton Manufacturing Company.

On the 23rd, Meeker, Brown, Hawkins and Brownlee were stopped at same place by Orr and others, and Brigman and Kissinger followed the men from the factory,—were on picket out there,—watching until these men came out, and then came down the street behind them, and came up when Orr and his men stopped Hawkins and Meeker and had the conversation on the

23rd. That is the conversation in which Orr handed his dinner basket to somebody in the crowd and said to Hawkins, "I will make you use that gun, you G—— D—— scab," and started for him, and Hawkins replied, "I will use it if needed, you big burley you." That conversation isn't denied. Here are the words by Orr, and Orr seemed to be a prophet when he said he would get all the blame, when talking with Stewart,—all the blame of the trouble, and it seems that he did, because he is the most prominent in every occurence that took place. They stop them, they talk about working out there, and then Mr. Kirby drives up, and they start on down to Dutoit street, and two of them follow Meeker. Meeker gets on street car, and they get on, but they don't catch up with him, and they do not see him. Mr. Kirby takes Hawkins in his buggy; Brown and Kendle walk on down to the Third street crossing, and there Hawkins joins them. They walk to the corner of Fifth and Main streets, and there they meet Brigman and another man, and Brigman wants an officer to arrest Hawkins for carrying concealed weapons, and the officer refuses, and Hawkins goes on home. Those men are following that man,—following the employees who are not interfering with them at all,—following Meeker and Hawkins and Brownlee and Kendle at this time and have no interest in the matter.

On March 24th, there is a large crowd at the corner of Third and Van Lear streets, and a large crowd in the neighborhood of the factory, and when the whistle blows at 3:20 P. M , there is probably one hundred and fifty people there, and then we have the occurance of Hawkins' arrest. We find Brigman and Orr and Kissinger and others of these men who were discharged, and who had been picketing around there, in this crowd. We find them asking the arrest of Hawkins by the police. The police had been telephoned to come out there because of the crowd. The police meet the men as they are returning from their work, and these men demand the arrest of Hawkins because he has a gun. They get on the street car and crowd in and go to the police head-quarters, and the facts are stated there, and the police give Hawkins his gun, and he walks away, and they follow him to his boarding house. None of this excitement, none of this trouble, unless these men are present,—unless these men are the cause of it; no crowd there but what these men are in.

Arrest of employee, acting as special policeman, demanded for carrying concealed weapons.

On March 26th, if your honor please, there was another crowd around the factory. It was necessary to call the policemen to escort the men home. Six men on that day followed Meeker to his home, and had a conversation with him until his uncle came in and the fellow said he was getting cold, and guessed he would go home.

Boarding house keepers threatened and intimidated. Workman assaulted. Police protection invoked.

Then on the 26th, Johnson was followed, and he tells of their

visit to his boarding house, and that immediately after their visit he was compelled to leave that boarding house, why? Because this commtttee had threatened that boarding house keeper.

March 27th, crowd at factory. Mr. Kirby had to take Meeker and Hawkins home. Brown and Kendle got on the street car and were followed by three or four men from the neighborhood to the factory. They go to the police headquarters and demand protection. The officers say they had nobody to go home with them. They walk to the corner of Fourth and Ludlow Streets and are assaulted. By whom?

There was an assault at the corner of Fourth and Ludlow. There can be no denial to that. for Brown testified to it, and he came back to the factory with his lip cut, and his eye black and and his clothes looking as if he had been rolled in the dust.

There was an assault and one of the men accused of it didn't dare deny it on the stand. He said he "didn't remember", and the other man accused is identified by Brown as the man who assaulted him.

This is all in harmony with the plans of this Union, all in concert with the movements of the members of this Union, who are pledged to obey orders of the majority. It is testified to by Brown, Colton, Stewart and Kirby, and one of the men who committed the assault, as much as admitted it on the stand.

Mob of two hundred surrounded one workman.

March 28th, a crowd at the factory of one hundred and fifty or two hundred men at quitting time. The other polishers had been sent away at two or three o'clock in the afternoon, Brown, Meeker, Hawkins, Kendle, Furrey and Brownlee. But Hays stayed there, stayed there until quitting time; at 5:20, when he goes out, what does he find? He finds Orr, Brigman, Gulde and McGee and others; Orr grabs him by the arm, and there are cries of "Kill the scab," and they follow him down the street, one of them having hold of the back of his coat collar.

Is that the way you persuade men? Is that the way you want to be persuaded, any one of you members, a man on each side of you, and a man at your collar, and threatening to kill you, and yelling, "Give it to him," and "Let me have a crack at him." Then Mrs. Hays comes up, and they follow Hays and his wife to Fifth Street, still crying "Scab," and calling him foul names. They follow them down to Fifth Street, and High and McGee get upon the car, and sit down beside of Hays, and want to know if he is going to work there again. What do they say to him? McGee and High say to him, "You will be killed if you go back there to work." We have saved you twice, but we cannot save you again."

Who are these men? High and McGee had no interest in this struggle. They weren't discharged men; they hadn't worked at this factory. They came from their homes or their

business on the 28th day of March, prior to the quitting time, and are there for a purpose. For what purpose? Of insisting upon the fact that this man Kirby shall not employ anybody but whom they say he shall employ.

On the 29th of March, the Mayor sends for Mr. Kirby. A committee consisting of Duttle and two others from the Union called upon the Mayor to see if they couldn't get him to interfere and arrange matters with Mr. Kirby. The Mayor calls Mr. Kirby down, and on the 29th, he has an interview with Mr. Kirby and gives a statement of what the committee wants, and Mr. Kirby very promptly and very properly puts his reply in writing, saying:

The Mayor solicited to interfere in behalf of Union.

"I will not meet any committee until I am assured there will not be any two or more persons congregate about the premises or on the streets of the city with the object in view of following or meeting any of our employees for the purpose of an interview, whether alleged peaceful or otherwise."

Now, they could not agree to that.

How easy it would have been for these defendants to have said: "We will accept Mr. Kirby's proposition," and then Mr. Kirby would have had a meeting with this committee. He doesn't say he would have dealt with them as a committee from the Union, but would have discussed this matter as individuals, not as a committee from the Union.

March 29th, 1900, all the polishers laid off. Why? It has been testified to by Mr Stewart and Mr. Colton and Mr. Kirby and others at the factory, that they were afraid for the safety of their employees. The men were being followed and assaulted and abused and threatened, and it wasn't safe for them to go back and forth to work.

Work at factory stopped because lives of employees are endangered.

On March 31st, Werkman had been employed there for eight or nine or ten days. He entered there as an apprentice. He was on trial. He quit because of threats, and because the committee called at the home of his grandmother where he lived. There isn't any doubt about that. Mr. Leo testified that he went and interviewed the grandmother of Werkman about his working at the Dayton Manufacturing Company; lovely business for a strong, able bodied man, to go and interview the grandmother because her grandson happened to get a job at the shop that didn't please them. But that is characteristic, if your Honor please, of this combination; it is characteristic of the acts of members to do this. They will do anything in order to prevent Kirby from running that factory as he desires to run it.

Revengeful work of members of Union.

On March 31st, Hays, who was a scab out there, who had been threatened by these members of this Union, Hays, who had been protected by the members of this Union, as they said, sitting in his house at supper, a stone crashes through the window blind. He rushes out, two men are wheeling away on their wheels.

We have not connected the thrower of that stone with this Union, but it is a remarkable fact that Mr. Hays has not been interfered with in any manner since this injunction has been allowed and his house has not been stoned since the trouble at the Dayton Manufacturing Company has stopped. He was a good enough man for them when he was at the Cash Register, and as his wife says, "He is a good enough man when he spends his money with you," but now that he is working and earning an honest living he is to be persecuted, because they have a personal grudge against Mr. Kirby and the Dayton Manufacturing Company.

On March 31st, Mr. Atherton says, in a conversation with Mr. Kirby, in discussing the trouble, "That is the only way they have of getting even with the 'capitalist or the rich man.'" From March 29th, 1900, when the polishing department was shut down, until the 6th of April, 1900, the department was closed, and there was no following of men because the men were not there.

Boarding and lodging house established in factory.

On April 6th, 1900, the polishers returned to work, and a boarding house was started.

Is not it a little strange that in this land of freedom, in these times, the manufacturers, in order to protect the men who desire to work for them, who are anxious to work for them, whom they are willing to have work for them, and whom they pay the wages agreed upon, are compelled to board and lodge their men in the factory to prevent them from being assaulted and intimidated on their way to and from the factory. It is a commentary upon the condition, that the members of this Union, or any Union, get into when it compels a manufacturer, for the protection of his men from their acts, to board and lodge them in the factory.

Appreciating what this meant to the factory, appreciating what it meant to the men, Mr. Kirby notified Mayor Lindemuth by letter of the intention of the plaintiff to resume work in that department.

On the same day a similar letter was sent to Mr. Thompson, President of the Board of Police Commissioners.

On April 17th, Friday Boots and R. Thomas, of the defendants were heard to say, "Well, what we will have to do is to line up against that front door," On April 18th, at a meeting of the Union, the executive board reports the case of Dayton Manufacturing Company progressing nicely. April 29th, Johnson, one of the "scabs", gets on the car at the factory to go to his boarding house. Three or four men get on the rear platform and kick him in the stomach, and talk to him about working out there, and abuse him, until he is confined to the house for a week and under the care of a doctor. Who these men were we do not know, but nobody else had taken any interest or paid any atten-

tion to Johnson working out there except Union No. 5 and the members thereof. Who they were they know within their own conscience. It grew out of the trouble between the polishers at the Dayton Manufacturing Company and the members of Union No. 5.

On May 22nd, 1900, the Minutes contain the following:

"Motion. That the scab that pulled the gun be arrested."

"Motion. That committee of one be appointed to go to the police department and get detective, and the party the gun was drawn on to identify scab. Committee, Ed. Hurley."

Why were they interfering? Had they police jurisdiction in the City of Dayton? What business was it of the Union?

From the testimony it appears that this man Rosebaum, while he went down and swore out a warrant for carrying concealed weapons against the man he did not know, against a man whom they could not identify, and against a man who was afterwards acquitted; they changed the charge to assault and battery, and on that charge the man was acquitted.

The communication sent by Nick Duttle, published in the Polishers' Journal, recites the troubles out at the Dayton Manufacturing Company, saying that Kirby tried all kinds of ways to get the men to sign iron-clad agreements, and come back to work for him under a slave system. He said it did not conflict in any way with the members of the Union. Failing in this, he hired a fellow by the name of Jerry Hawkins under his iron-clad system at a dollar and a dime a day for four years, and had him sworn in as a special policeman.

Who wrote this? Nicholas Duttle; and you will find while in progress of this trial, he gets leave from the Court and hastens away to Milwaukee, where the International Union is in session, and there he pours out his trouble, and there he has a resolution passed that if the Dayton Union is defeated in this case the International Union will back them up and take the case to the last Court.

Delegate to Inter-national convention makes a record.

On May 6th, Sunday, there is a crowd of from one hundred to one hundred and twenty-five at the factory at 10 a. m. The police were called for, and seven officers were furnished. But Ritter, one of the defendants who was there, did not see another polisher there on May 6th. He went out there as he testified. He was in charge of the pickets, and directed the pickets. Gulde had charge of the pickets, and was told to give instructions to the pickets and others out there, but none of them could see anybody else.

On May 11th, a crowd of from one hundred to one hundred and fifty men around the factory; building stoned, windows broken. Mr. Kirby telephoned the police headquarters and to

Mob assembles; building stoned; windows broken. Officials of the County called on for protection.

Mr Ferneding. Captain Allabach went out there and he says there was a crowd of one hundred to one hundred and fifty people there; that they kept them moving, but that there was this destruction of property. Now, what right had any person to destroy this property, or to interfere with this work? On May 11th, Mr. Kirby was still trying to get rid of these annoyances Still trying to prevent those disgraceful occurrences, he sent a letter to the County Commissioners and the Police Board. The same letter, or a copy of the same letter, was sent on the same day to Mayor Jesse Lindemuth, and on the 12th of May a notice was sent to the County Commissioners and to the Board of Police officers, to the same effect. A like letter was delivered to the Board of Police Commissioners.

That there was a crowd there on the 12th of May, there is no question. Mr. Leo admitted that he was around there all evening. Thomas was there, Shillito was there, Ryan was there and McGee was there, and besides these there was a crowd of one hundred or one hundred and fifty people. These men were there. Leo did not work there, Ryan did not work there and McGee had not worked there. What were they out there for when they knew that disturbances were going on, if they desired the law to be enforced? Why did not they remain at home in the place of going out there and swelling the crowd that was threatening their neighbors?

Photographs conducive to an ascertainment of facts as to participants in acts of violence.

On the 13th, another crowd was there? It is so impressed on the minds of these defendants that every man of them, except four out of fifty-one, that were called for cross-examination in this case admitted that they were there. It is the only time that an admission is obtained from them that they were there in such numbers, although they didn't recognize each other, but the incentive to truth-telling lay in the fact that half a dozen photograph instruments were used that morning. There were one hundred to one hundred and fifty men there, and boys in a few places. No women were seen in that crowd. Officer McBride testified as to this crowd. He says:

"On the morning of May 13th, a crowd gathered around the factory of the Dayton Manufacturing Company, I should judge, one hundred and fifty."

"What occurred there?"

"I received orders to go out there with the Sergeant and ten men. On the evening of the 12th, there was nothing outside of possibly twenty-five or thirty people walking around the street. On Sunday morning there was a crowd, making a rough guess, of one hundred and fifty."

There were crowds there that weren't neighbors, that weren't boys of the neighborhood, of which crowd, as shown by the testimony, forty-seven were the defendants in this case and polishers, members of Union Local No. 5.

On the 14th the injunction was allowed, a temporary injunction, and since that, there hasn't been anything to occur that annoyed the plaintiff. On the 16th, there was a communication from the Central Trades Union about an emergency fund, each affiliated member to pay ten cents a week. (Minutes, page 278.) May 16th, President reported as to waiting on Police Board and Sheriff, and being served with injunction. Authorized to employ attorneys; assessment of one dollar on each member to be paid in thirty days. (Minutes, page 280, 281.)

Temporary injunction allowed. An end of malicious interference by the union and its members.

That is a significant fact, if your Honor please, in reference to the interest of this union and its members, in this disturbance which occurred at the Dayton Manufacturing Company. These disturbances occurred, and it was impossible to carry on the business. An injunction was asked for, and this union immediately by a majority of its members, took up the matter, and there was an attorney employed to defend the suit, and they assess each member so much for the purpose.

AS TO THE LAW APPLICABLE TO THE CASE:

In presenting the law, I shall present it as briefly as possible, and only for the purpose and with the desire to give to the opposing counsel our claim as to what the authorities have decided, and how these authorities support the application made in this case and the claims that we have made.

We have shown, if your Honor please, that the Union started in September, before these men were discharged, to organize a Union shop in that department. We have shown that immediately upon the discharge of the men, they reported the fact at a meeting of the Union, and a committee on strike was appointed, consisting of A. Gulde as Chairman, William Orr as Assistant Chairman, and Charles Brigman as Secretary.

Statement of the law as applicable to the case.

We have found by their Minutes that every step that has been taken in the progress of this trouble with the Dayton Manufacturing Company has been recognized and endorsed by the Union. We find that the picketing has been done by the order of the Union. We find that the employees of this department have been threatened. We find that they have been assaulted. We find that they have been stopped on their way to and from their homes, when going to work. We find the union paying its money for the prosecution of a man for carrying concealed weapons—Hawkins. We find the union paying its money for the prosecution of a man by the name of John Doe. We find committees of the Union, endorsed by the Union, following the men to their boarding places. We find men quitting because of intimidations and threats on the part of the members of this Union. We find the oath or pledge which they take compels them to obey the orders of the legal majority of the Union.

Hence, we claim that a combination and a conspiracy has been established upon our part as against the defendants in this action.

AS TO COMBINATIONS:

Eddy on Combinations, Section 368, lays down the law, as follows:

The law as to Combinations.

"To show conspiracy, it is not necessary to prove an express compact or agreement among the parties thereto. The essential element of the charge is the common design; but it need not appear that the parties met together either formally or informally, and entered into any explicit or formal agreement; nor is it essential that it should appear that either by words or writing they formulated their unlawful objects. It is sufficient that two or more persons in any manner, either positively or tacitly, come to a mutual understanding that they will accomplish the unlawful design. And anyone, after a conspiracy is formed, who knows of its existence and purpose and joins therein, becomes as much a party thereto from the time of his joining as if he had been an original member."

On page 278 of Eddy on Combinations, and this is read for the purpose of showing that such combinations are not of recent growth, but as far back as 1806, there was a prosecution against a combination of boot and shoe makers, it is stated.

"The accused were journeymen boot and shoe makers, and, not being satisfied with the usual rate of wages, entered into a combination, the object of which was to increase their wages; and as a means to that end, they adopted a scale of work and wages, and agreed among themselves to refuse to work except according to the scale. It was also charged that they agreed to prevent by threats, menaces and unlawful means other workmen from working except at the established rates. In short, the evidence showed the existence of a union, the object of which was to advance wages by means of concerted action for the benefit of the members of the union, and, if necessary, the resources of the union were to be employed against all workmen who were not members of the union. In charging the jury, the recorder stated the law broadly to be:

1. That it was immaterial whether employer or employees be the prosecutors; that the law was the same regarding combinations of either.

2. That it was immaterial what the motives of the accused were, whether to resist alleged oppression of employers or to insist upon extravigant compensation for themselves; the sole question being whether they were guilty of the offense actually charged against them.

3. That the prices of the goods are ordinarily regulated by the character of the demand and the character of the supply; that a combination of the object of which is to regulate prices regardless of the demand, regardless of the quality of the goods, is an unnatural way of raising prices of either goods or work, and the law does not protect such conduct.

4. Such arbitrary regulation of wages tends to place inferior workmen on a level with the good, since it compels the master to pay the same wages to each. All incentive to excel in workmanship or industry is thereby taken away.

5. Such combination is pregnant with public mischief and private injury, and tends to demoralize workmen and destroy the trade of a city."

In an action in the Circuit Court of Appeals, of the United States, Seventh Circuit, in reference to railroad employees quit-

ting service without cause, in the case of Arthur, et al. vs. Oakes, et al., 63 Fed. Rep., on page 321, in reference to conspiracy and combinations, the Court say, through Justice Harlan:

"The combinations or conspiracies which the law does not tolerate are of a different character. According to the principles of common law, a conspiracy upon the part of two or more persons, with the intent, by their combined power, to wrong others, or to prejudice the rights of the public, is in itself illegal, although nothing be actually done in execution of such conspiracy. This is fundamental to our jurisprudence. So a combination or a conspiracy to procure an employee or a body of employees to quit service in violation of the contract of service would be unlawful, and, in a proper case, might be enjoined, if the injury threatened would be irremediable at law. It is one thing for a single individual or several individuals each acting upon his own responsibility and not in co-operation with others, to form the purpose of inflicting actual injury upon the property or rights of others. It is quite a different thing, in the eye of the law, for many persons to combine or conspire together with the intent, not simply of asserting their rights or of accomplishing lawful ends by peaceable methods, but of employing their united energies to injure others of the public. An intent upon the part of a single person to injure the right of others or of the public is not of itself a wrong, of which the law will take cognizance, unless some injurious act be done in execution of the unlawful intent. But a combination of two or more persons with such an intent, and under circumstances that give them, when so combined, a power to do an injury they would not possess as individuals acting singly, has always been recognized as in itself wrongful and illegal."

The proposition is supported by State vs. Glidden, 55 Conn., page 75; Moores vs Bricklayers Union No. 23, W. L. B., page 48. This latter case which was decided by Judge Taft of the Superior Court of Cincinnati, and affirmed by the Supreme Court; says:

"The discussion up to this point has ignored the element of combination in the acts of the defendants. But such cases rarely, if ever, arise, because the power of a single individual to put into operation such a chain of causes as are necessary to inflict loss, is hardly to be conceived. The combination of individuals to effect such a purpose is generally indispensable to its success."

On page 52, the Court say:

"We are of the opinion that even if acts of the character and with the intent shown in this case are not objectionable when done by individuals, they become so when they are the result of combination, because it is clear that the terrorizing of a community by threats of exclusive dealing in order to deprive one obnoxious member of means of sustenance, will become both dangerous and oppressive. The conclusions we have reached as to the actionable character of the defendants' acts are supported by a great number of authorities in this country, and by the citation of those cases, we might have justified our decision without seeking to explain the principles upon which it depends."

In State vs. Glidden, 55 Conn., 46, the Court say:

The motive was a selfish one,—to gain an advantage unjustly, and at the expense of others; and therefore, the act was legally corrupt. As a

means of accomplishing the purpose, the parties intended to harm the Carrington Publishing Company, and therefore, it was malicious. It seems strange that in this day, and in this free country—a country in which law interferes so little with the liberty of the individual,—it should be necessary to announce from the bench that every man may carry on his business as he pleases, may do what he will with his own, so long as he does nothing unlawfully, and acts with due regard to the rights of others; and that the occasion for such an announcement should be not an attempt to interfere with the rights of the citizen, not by the rich and powerful to oppress the poor, but an attempt by a large body of working men to control, by means little if any better than force, the action of employers. The defendants and their associates said to the Carrington Publishing Company, 'you shall discharge the men you have in your employ, and you shall hereafter employ only such men as we shall name. It is true we have no interest in your business, we have no capital invested therein, we are in no wise responsible for its losses or failures, we are not directly benefitted by its success, and we do not participate in its profits; yet we have a right to control its management and compel you to submit to our dictation.' The bare assertion of such a thing is startling. The two alleged rights cannot possibly co-exist. One or the other must yield. If the defendants have the right which they claim, then all business enterprises are alike subject to their dictation. No one is safe in engaging in business, for no one knows whether his business affairs are to be directed by intelligence or ignorance—whether law and justice will protect the business, or brute force regardless of law will control it; for it must be remembered that the exercise of the power if conceded will by no means be confined to the matter of employing help."

In State vs. Dyer, 67 Vt., 690, the Court held that,

"A combination of two or more persons to constrain an employer to discharge a particular workman by threating to prevent his obtaining other workmen, or to constrain a workman to join a certain organization by threating to prevent him from obtaining work unless he does so is a criminal conspiracy at common law."

In the case of Vegelahn vs. Guntner, 167 Mass., 92, decided in 1896, the Court say:

"Maintaining a patrol of two men changed every hour in front of a person's premises, as part of a conspiracy to interfere with his business until he shall adopt a certain schedule of prices, in combination with persuasion, social pressure, or threats of personal injury or unlawful harm conveyed to persons employed by him or seeking such employment, amounts to intimidation, and constitutes a private nuisance which equity will restrain by injunction; and such injunction will issue, although the facts enjoined may be criminal, and are designed only to affect persons who are not bound by contract to enter into or continue in the employment."

In Pettibone vs. U. S., 148 U. S., 197, the Court say:

"A conspiracy is sufficiently described as a combination of two or more persons, by concerted action, to accomplish a criminal or unlawful purpose, or some purpose not in itself criminal or unlawful, by criminal or unlawful means."

In the case of Thomas vs. Cincinnati, N. O. & T. P. Ry. Co., 62 Federal Reporter, the Court held:

"A combination to incite the employees of all the railways in the country to suddenly quit their service, without any dissatisfaction with

the terms of their employment, thus paralyzing utterly all railway traffic, in order to starve the railroad companies and the public into compelling an owner of cars used in operating the roads to pay his employees more wages, they having no lawful right so to compel him, is an unlawful conspiracy by reason of its purpose, whether such purpose is effected by means usually lawful or otherwise."

In the case of Cas-y vs Typographical Union, 45 Federal Reporter, 135, the Court, in considering the contention of the defendants, referring to the case in the Wabash R. R. Co., 24 Federal Reporter, 217, say:

"In that case the following notice was sent to various foremen of the shops of the railroad company, during a strike organized to resist a reduction of wages, the railroad company being at that time in the hands of a receiver appointed by the United States Circuit Court. 'Office of Local Committee, June 17th, 1885. Foreman: You are requested to stay away from the shop until the present difficulty is settled. Your compliance with this will command the protection of the Wabash employees. But in no case are you to consider this an intimidation.' *Held*, that this was an unlawful interference with the management of the road by the receiver, and a contempt of Court, for which the writer should be punished.

"The Court in passing upon the case, said: 'the statement in all these notices that they are not to be taken as intimidations, goes to show beyond a doubt that the writer knew he was violating the law, and by this subterfuge sought to escape its penalty.' "

Crump vs. Commonwealth, 84 Va., 927.
In re Debs, 158 U. S., 564.
State vs. Jacobs, 7 O. N. P., 261.

AS TO PICKETING:

Pickets were placed around the factory, as shown by the testimony, by order of the defendant Union, to persuade and prevent other polishers from going there for employment. If only two men went there of their own volition, for the purpose of picketing, it was contrary to law, and contrary to the decisions A recent decision, August 30th, 1900, against picketing, not in this country, but in England; where a verdict against picketing during strikes was rendered by Justice Farwell of the High Court of Justice.

The law as to Picketing.

"General Secretary Bell, of the Amalgamated Society of Railway Servants, and organizing secretary Homes, were enjoined from watching and besetting the Great Western Railway Stations and approaches with a view of inducing non-union men not to take the places of Taff Vale Railroad strikers."

See also Barr, et al. vs The Essex Trades Council, the Typographical Union, No. 103, of Newark, et al., 53 N. J., 101.

In the case of Murdock, et al., vs. Walker, et al., 152 Pa. St., 595, the Court say:

"A Court of equity will restrain by injunction discharged employees, members of a Union, from gathering about their former employer's place of business, and from following the workmen whom he has employed in place of defendants, from gathering about the boarding houses of such

workmen, and from interfering with them by threats, menaces, intimidations, ridicule, and annoyance."

In the case of The American Steel and Wire Co. vs. Wire Drawers and Die Makers Unions, Nos. 1 and 3, et al., 90 Fed. Rep , page 608, the Court, by Justice Hammond, say:

"It was frequently urged in argument that the strikers had a right to be on the streets; and so they have so long as they do not trespass on the rights of others to use them. The right of the use of the streets by any one is a qualified right. The owner of a house, be it dwelling house, store house, or mill house, has a distinct right of property in the streets adjacent thereto, and used as approaches to it. It is the right of access—free and uninterrupted ingress and egress. Anyone who uses the streets must use them subject to this right of the householder; and there is not a particle of difference in respect to this being a dwelling house and a mill house or large factory employing large bodies of men. Nor is the freedom of contract and right of access through the streets to one's work at all affected by assumed peculiarities of conditions attending the struggles of men in the economic conflict between laborers and capitalists, nor by any considerations of public policy in respect to these conflicts. * * * If any one violate the right of the householder to the streets that are appurtenant to his property, as a part of it, by impairing his egress and ingress, he has a civil action and he may also abate it by injunction in equity as a private nuisance."

See also case of Curran vs. Galen, 152 N Y., 33.

In Hopkins vs. Oxley Stave Co., 83 Fed. Rep., p. 912. decided in 1887, the Court say:

"Picketing is watching and speaking to the workmen as they go to their employment to induce them to leave the service."

Vegelahn vs. Guntner, 167 Mass., 92.

Eddy, on Combinations, Sec. 534-5-6-9.

AS TO THREATS:

The law as to Threats.

As to threats, and intimidations produced by such threats, they need not be threats of personal physical violence or harm, nor any threatening words necessary to constitute such a "threat." Persuasions and requests are sufficient, if they are made under circumstances as to convey the impression that they are to be obeyed.

34 American Law Review, 182.

In the case of Vegelahn vs. Guntner, 167 Mass., page 92, threats and picketing and patrolling are all enjoined.

The case of Beck, et al. vs. Railway Teamsters Protective Union, 118 Mich., 497, was an action by Jacob Beck and others for an injunction to restrain defendants from interfering with complainant's business. The Court say:

"A court of Equity will interfere by injunction to restrain a combination of persons from boycotting complainant's business, by intimidation and coercing their customers to leave, and endeavoring, by abusive and threatening language, to drive away their employees."

In the case of Sherry vs. Perkins, 147 Mass., 212, the same principle is laid down.

Couer d'Allene Co. vs. Miners Union, 51 Fed. Rep., 260, 266.

Casey vs. Typographical Union, 45 Fed. Rep., 135–143.

AS TO THE JURISDICTION OF THIS COURT AS TO DEFENDANTS:

Jurisdiction of the Court as to Defendants.

These are but part of the authorities that could be submitted upon these various questisns. There is no case of recognized authority that I have been able to find, in which even picketing is permissible, and no case that I have been able to find where the Court would not exercise its jurisdiction to restrain threats and intimidations, and unlawful acts of the defendants.

Courts of Equity will enjoin mere persuasion when it has for its object the malicious or unlawful end or persuading third parties to break a contract, or otherwise to act in violation of the legal rights of the plaintiff. In the American Law Review, volume 34, page 176, the author says:

"The precedents go farther than this; they show that a court of equity will enjoin mere *persuasion* when it has for its object the malicious and unlawful end of procuring third parties to break a contract, or otherwise to act in violation of the legal rights of the plaintiff."

Toledo A. A. & N. M. Ry. Co. vs. Pennsylvania Company, et al., 54 Fed. Rep., 730.

In Mackall vs. Ratchford, et al., 84 Fed. Rep., 41–2, a restraining order had previously been granted by Judge Jackson. It restrained the defendants and all others from in any way interfering with the management, operation or conducting of the mines named in the bill, either by menaces, threats or intimidations of any character used to prevent employees of said mines from going to or from the same, or from engaging in their usual business of mining.

In the case of Flaccus vs. Smith, et al., decided April 15, 1901, by the Supreme Court of Pennsylvania. Justice Brown decided the case, and in closing, said:

"The appellee has the unquestioned right, in the conduct of his business, to employ workmen who were independent of any labor union, and he has the further right to adopt a system of apprenticeship which excluded his apprentices from membership in such a union. He was responsible to no one for his reasons in adopting such a system, and no one had a right to interfere with it to his prejudice or injury. Such an interference with it was an interference with his business, and, if unlawful, can not be permitted. The Court found that the interference was injurious to him, and if allowed to continue, would utterly ruin his business. The damages resulting from such an injury are incapable of ascertainment at law, and justice demands that specific relief be furnished in a court of equity. The test of equity jurisdiction is the absence of a plain and adequate remedy at law to the injured party, depending upon the character of the case as disclosed in the pleadings. If equity alone can furnish relief, the injunction

must be issued. With this test applied to the pleadings and the facts found by the learned Judge below, the decree which he made was proper. It is now affirmed, and the appeal from it is dismissed at the costs of the appellants."

Plant vs. Wood, N. W. Rep., page 1011, decided September 6, 1900.

Vegelahn vs. Guntner, 167 Mass., page 92.

The law as to the form of Order.

AS TO THE FORM OF ORDER:

Your Honor's attention is called to a case decided October 18, 1898, The Steel & Wire Co. vs. Unions, decided by Judge Hammond, in the Ohio Legal News, 117, January 21st number, and January 28th number, 1901. The syllabus is as follows:

'Injunction lies to prevent strikers' interference with access to property. In case strikers interfere with access to and from the property of a mill owner against whom the strike is pending, injunction will lie to prevent such interference.

2. Injunction lies against congregating strikers. Where large bodies of men are massed and controlled by leaders near a mill so as to be used for obstruction to trade, although all actual assaults which are made by them may be justified, it will constitute violence within the prohibition of the law against which injunction will lie.

4. No remedy by police protection. Where the police state that they regard their duty done when they prevent actual violence without taking steps to keep the streets clear for the transaction of business, there is no adequate remedy by police protection, to oust the remedy by injunction, to prevent strikers interfering with the right of access to and from the property of their employer.

8. Display of force ground for injunction. The display of force sufficient to deter others from attempting to exercise a lawful right, when so intended, is sufficient grounds for injunction; it not being necessary that actual assault and battery be committed."

After reciting the facts in the case, the Court say:

"The foregoing is a sufficient and fair summary of the facts established by the proof. The Court is not engaged, as a criminal or police court, in trying offenders for assault and battery nor for engaging in tumults, riots, or mob violence, wherefore much of the testimony on both sides is quite irrelevant and inappropriate to this inquiry. It is not one of the present duties of the Court to locate the blame for the occurrences which have been detailed in the affidavits and by the witnesses; and, indeed, either side may be blameworthy, or both, and the fact should not affect the question now to be decided; neither is the Court properly concerned at this time about the rightfulness or wrongfulness of the strike, in relation to the causes which brought it about; and therefore the foregoing statement of facts does not at all deal with the details of the transactions and occurrences so voluminously set out in the proof. The only question is, does this proof, as a whole, justify a reasonable apprehension on the part of the plaintiffs that the defendants, in maintaining their strike, will illegally disturb their business and injure it by unlawful acts of violence and intimidation of outside laborers—"scabs" if you please, willing to work for the plaintiff at the wages which they offer. Even "scabs" and those who employ "scabs" in time of a strike have rights which the strikers are bound by the law to respect. The most important of these rights is unob-

structed access to the place where the work is done, over the streets and highways by which it is approached. Nor is this freedom of access at all inconsistent with any right the strikers have to use the streets and highways for the lawful conduct and maintenance of their strike by intercepting any one going to work in their place for the purpose of peaceful entreaty or argument against supplanting them. One authenticated instance in this proof where the strikers, meeting a single "scab," or a group of them, or an organized body of them, had stood aside, opened up the street, and allowed him or them to pass to the mill without more ado, after the entreaty or argument had failed to convince, would be worth more, as a matter of evidence showing the good faith of the strikers in their assertion that they were on the street only for an opportunity of entreaty and argument, than all the affidavits filed in this case."

American Law review, page 176, et seq.
U. S. vs. Swenny, 95 Fed., 434, 439, 440.
In re Debs, 158 U S., 564, 593, 597.
Murdock vs. Walker, 152 Pa. St, 595.
Barr vs. Essex Trades Council, 53 N. J. E., 101.
Arthus vs. Oakes, 11 C C. A., 209.

The order which Judge Hammond granted in that case is as follows:

"It is hereby ordered, adjudged and decreed that the Wire Drawers and Die Makers' Union No. 1, of Cleveland, Ohio, Walter Gillette, its President, and Wire Drawers and Die Makers' Union No. 3, of Cleveland, Ohio, Fred Walkers, its President. and the officers and members of said Unions, and each and all of the other defendants named in the complainant's bill, and any and all other persons associated with them in committing the acts and grievances complained of in said bill, be, and they are hereby, ordered and commanded to desist and refrain from in any manner interfering with, hindering," etc.

In winding up, it says:

"And it is further ordered that the aforesaid injunction and writ of injunction shall be in force and binding upon each of said defendants and all of them so named in said bill from and after the service upon them severally of a copy of this order, by delivering to them severally a copy of this order, or by reading the same to them; and shall be binding upon each and every member of said Wire Drawers and Die Makers' Union No. 1, of Cleveland, Ohio, and Wire Drawers and Die Makers' Union No. 3, of Cleveland, Ohio, from the time of notice or service of a copy of this order upon the said Walter Gillette and Fred Walker, and other members of said Unions, parties defendant herein; and shall be binding upon said defendants whose names are alleged to be unknown, from and after the service of a copy of this order upon them, respectively, by reading of the same to them, or by publication thereof by posting or printing; and shall be binding upon said defendants and all other persons whatsoever who are not named herein, from and after the time when they severally have knowledge of the entry of this order, and the existence of this injunction."

This order followed the Debs case in 158 U. S., page 577. In the case of In Re Lennon, 166 U. S., p. 548, the Court, says:

"To render a person amenable to an injunction, it is neither necessary that he should have been a party to the suit in which the injunction was

issued, nor to have been actually served with a copy of it, so long as he appears to have had actual notice."

The foregoing are part only of the authorities. We have not attempted to cite all, much less to quote at length from any great number of them.

In conclusion, we quote from a prominent writer upon this subject. Every intelligent man knows that the question that we are now discussing, is being thought of, being written about, being talked of, being discussed by all of the brightest minds of the country, and in the "Outlook" of May 18th, and in the "Outlook" of the week before, Lyman Abbott, in writing of this matter, says:

"The attempt to force laborers to join a union to get employment is a far more serious violation of the rights of labor than of the rights of capital, and if generally successful, will, in the end, demoralize it, if it does not destroy the unions themselves. Every working man has a right to belong to a labor organization if he chooses. He has an equal right to refuse to belong, and the denial of either right, whether by the labor or the capitalistic organization, is a species of depostism. Moreover, any policy which converts the labor unions from a voluntary organization of free men into an organization partly made up of free men, partly of those who have been drafted into the organization against their will, is destructive of the organization itself. It can have no other effect than to sow seeds of dissention within the order, which, when the time of trial comes, when its strength is most neeeded, will cause it to break down for lack of moral co-herence."

Outlook, May 18, 1901.

"If any organization undertakes to prevent any man from working when he will, where he will, for whom he will, and at what wages he will; that organization violates the essential right of labor. Imagine, for a moment, that any man should propose to place a law upon our statute books, providing that no man should work in any special industry, unless he belonged to some special guild, not for an instant would he have the support of the people; not for an instant would he have the support of any free people; but such a law is not better, but rather worse, if it be enacted by any irresponsible body and enforced by violence."

Outlook, May 11, 1901.

Summary of the rights of the Plaintiff involved in the case.

Upon the determination of this case, rests the right of the Dayton Manufacturing Company to engage in the business that it pleases, to engage the men that it pleases, to discharge the men when it pleases; also depends the right of the man seeking employment with the Company, the right to work for the Company at the wages agreed, without interference or molestation. And relying upon the facts produced and the authorities cited, we ask of this Court that the temporary injunction be made perpetual, and made broad enough to fully protect the Company, its property, its business, and its employees from interference on the part of the defendant Union and its members, and all other persons associating or confederating with them, in any manner whatever

MR. JOHN A. MCMAHON, FOR THE PLAINTIFF.

May it please your Honor: Quite a while has elapsed since this trial began. With the great amount of testimony that has been taken—to which we have not had access in the absence of the stenographer—it is not to be expected that we will be able to enter into all the details of the testimony, nor would it be desirable or necessary for me to do so, as my colleague, in opening, has made a full and elaborate presentation chronologically of the facts upon which we rely for our injunction. This hearing is for a permanent injunction. The case is to be tried, as your Honor indicated during the hearing, upon the conditions that prevailed on the 14th day of May, 1900. The quiet that has existed around The Dayton Manufacturing Company since May 14th, 1900, is no objection to an injunction. That quiet is due to the law, willingly given, we hope; but we have no reason to believe it will continue if the law withdraws.

Enforced quiet through respect for law.

We are to try this case, as if your Honor sat upon the 14th day of May, to grant a permanent injunction, acting upon the facts as they were developed up to that date.

Everything that transpired after the 14th day of May, except in so far as it was necessarily connected with what happened before, was excluded from consideration. It is easy, after the lapse of time, for my friend Judge Dwyer to make light of the situation because everything is now quiet; to treat as a myth or a joke what took place in Meywald's saloon, the assault in front of the Garfield Club, the attack upon the young Swede, Johnson, laid up for a week with the injuries received at the hands of his brutal assailants, the mob that followed Hayes with cries of "kill him," "kill him," or the attack upon his house.

Acts of brutal assailants not a joke.

It is easy for gentlemen upon the other side to say all this is nothing; and to call into Court neighbors with bad or convenient memories, or timid souls, to indulge in the easy testimony of a negative character that they did not hear any noises, or see any threatening crowds marching up and down, or anything else unusual.

Witnesses with convenient memories.

I have just looked over the testimony of Captain Allaback, of the police force, who says that on the night of May 11th

Testimony of the Chief of Police.

he went out there with six men and the crowd was so large, so unruly, so turbulent, that he had to send for more help. He sent for ten more officers, making sixteen policemen to deal with this little joke of my friend Judge Dwyer's, the quieting of which took until 11 o'clock that night.

Talk for the benefit of misguided men who allow themselves to be placed in position of law-breakers.

I am going to talk very plainly in this case,—not so much for your Honor's benefit,—as for the benefit of these misguided men, who, from a want of knowledge of the laws of their country, or a disregard of their obligations to it, allow themselves to be placed in the position of law-breakers violating the first principles of liberty protected by the constitution of our state.

I say I wish to speak to the men themselves, as well as to your Honor.

Members of Unions liable civilly and criminally for what irresponsible majorities decree. A power above all Unions—that is the law of the land.

I believe they often get cheap and bad advice. I believe that they are often led into dangerous positions by yielding to turbulent leaders. Many of them do not seem to be aware of the fact that by surrendering themselves up to the control of their unions, they become liable civilly and criminally for what irresponsible majorities may decree. I want them to learn that there is a power in this land above all unions—and that is the law of the land.

My friend, Judge Dwyer, indulged us, as a part of his argument, with the reading of an able discourse of his delivered some few years ago, upon "Capital and Labor." Why Judge, so far as I can take in your ideas there was hardly a line in which I do not concur. Nobody is denouncing labor unions working for their professed objects. Nobody denounces the laboring man for seeking to better his conditions by having shorter hours of work. Nobody denies his right to strive for better sanitary conditions, or better pay for his labor, or to combine for these purposes. Nobody doubts the wisdom of those statutes that have been passed for his protection in the factory,—the covering of dangerous instruments, guards against elevator holes, and such danger as may beset a man in the factory in some careless moment. Nobody finds fault with all these things. That is not the proposition involved in this controversy.

No one opposes Labor Unions working for their professed objects.

Ignoring the law and Constitution; claiming special privileges and denying to others the rights they claim for themselves.

What we do find fault with is, that any set of men, whether they be workingmen, manufacturers, lawyers, or others, shall set themselves above the law and the constitution, claiming especial rights and privileges, and denying to other men who do not think as they do, the rights that they claim for themselves.

In this country no man is more interested in the preserva-

tion of order than the laboring man himself. The line of action adopted by *some* of the laboring unions (not all), if carried out will ultimately lead to anarchy. Every one knows that anarchy is the egg that hatches the empire, when the workingman really becomes the pitiful slave that he now pretends to be.

The policy of some Unions, if carried out, will lead to anarchy.

Anarchy never reigned long anywhere. It is a condition that cannot long exist. The workingman who owns his own little home, and wants peace and quiet for himself and family, soon tires of being lead by reckless men, and, after anarchy rears his bloody head he welcomes any one who gives him the boon of peace, scarcely cosidering the price he pays. History is full of such instances. The most remarkable was the French Revolution to which the demagogue is so fond of referring. The French people suffered for hundreds of years the worst form of oppression. The American mechanic is a prince compared to the peasant or the mechanic of that nation prior to the Revolution. The offal from his back yard would have been a feast. When human nature could no longer endure, the infuriated masses satiated themselves with blood; but each set of leaders took their turn at the guillotine, the executioners of one day being the victims of the next, until the strong arm of the emperor gave them domestic quiet seasoned with the most absolute tyranny that the European world had ever known.

Prosperous and economical workingmen soon tire of being led by reckless men, as is illustrated by the French Revolution.

To this end our own country will ultimately come if violence and mob law are to overturn the plain rights of the people, and one set of men are to use force to compel the acceptance of their views, or to advance their prosperity at the expense of their neighbors. No one objects to scales of wages, or propositions for short hours, but to their advocacy by violent or oppressive means

Revolution inevitable if violence and mob law are to overturn the rights of the plain people.

Judge Dwyer has referred to a fee bill of the lawyers as a vindication of the scale of prices fixed by unions. Judge, you know as well as I do that the old fee bill is a great joke. Who pays any attention to it? And if it is disregarded, who worries? Do we ever have a committee to meet the sinners? Do we slug and knock the "scabbers" down? Do we boycott them? No, as I said before, it is not the scale of prices, nor the hours of labor, nor the proper demands to which objection is made. We object to unlawful methods to procure them.

Lawyers do not slug and knock the scabbers down to enforce the fee bill of lawyers.

Let us discuss the question involved. There are friends of mine in this organization. I want them to hear sound law and the doctrine of good citizenship, not from my mouth, but from the sages of the law, so that they may demean them-

An attorney's earnest appeal to his friends in labor organizations.

selves as good citizens and not as law-breakers. Our government is based upon the people. No government such as ours can long exist unless the people obey their own laws. Whenever the people habitually overturn the law, the seeds of dissolution begin their work; the Republic nears its end. When the people of Ohio got together to adopt a Constitution, the Convention first established the Bill of Rights; a code of certain inalienable rights belonging to every citizen, beyond the reach of legislation, and certainly beyond the reach of a self-elected and irresponsible union organization.

Equal rights and independence for the poorest laborer or the highest magnate in theland; the members of the Union or the so-called "scab."

The first article in the Bill of Rights reads as follows:

"All men are born free and independent, and have certain inalienable "rights, among which are those of enjoying and defending life and liberty, "acquiring, possessing, and protecting property, and seeking and obtaining "happiness and safety."

These are great, comprehensive words, intended to lay the broad foundation of equal rights in all, and of independence in the exercise of those rights, for all the people of the State, whether the poorest laborer or the highest magnate in the land; the member of the union, or the so-called "scab." Let me read Section 7 of the Bill of Rights,—not that it bears upon the identical question involved in the case, but because it shows that our Constitution protects the conscience of every citizen, as Section 1 protects his civil rights.

"SEC. 7. All men have a natural and indefeasible right to worship Al- "mighty God according to the dictates of their own conscience. No person "shall be compelled to attend, erect, or support any place of worship, or "maintain any form of worship against his consent; and no preference "shall be given, by law, to any religious society; nor shall any interference "with the rights of conscience be permitted. No religious test shall be re- "quired, as a qualification for office, nor shall any person be incompetent "to be a witness on account of his religious belief; but nothing herein shall "be construed to dispense with oath and affirmations. Religion, morality, "and knowledge, however, being essential to good government, it shall be "the duty of the General Assembly to pass suitable laws to protect every "religious denomination in the peaceable enjoyment of his own mode of "public worship, and to encourage schools and the means of instruction."

Now let us consider one more section.

"SEC. 16. All Courts shall be open, and every person, for an injury in "his land, goods, person, or reputation, shall have remedy by due course of "law; and justice administered without denial or delay."

If a man does not belong to a Union he is a "scab," and

In spite of these fundamental declarations recognizing rights that no power in the land can deny or qualify, some unions seem to have set up a standard that a man who does not belong to their organization is not entitled to work. He

is a "scab." As a "scab" he is a person turned loose in society without rights, who may be assaulted and beaten with impunity. This notion seems to be supplemented at times with the further understanding that if the guilty party is caught and tried, every method to enable him to escape is justifiable, even to a prevarication of the truth, under the solemn pledge taken at initiation, to stand by a "brother." We had a lamentable exhibition in the Phebus' trial which took place in this Court. Union men should pause when they see to what lengths their false position drives them.

not entitled to work—a lamentable illustration of brutality.

It is not at present our business to investigate whether the troubles that grow out of these Union disturbances are inherent in the organization generally and belong to it, or whether they are imported into it by bad and unscrupulous men who use their power for evil where it should be used for good. We are concerned at present with the Metal Polishers' Union only, their principles and practices.

Constitution and By-Laws of the International Metal Polishers' Union.

I hold in my hands the Constitution and By-Laws of the International Union, and of the Local Union of the defendant organization, a publication so recent as the year 1900, adopted June 24th, 1900. I read from the Preamble:

"Regarding with solicitude the unhappy condition of our trade, which "condition has been brought about by competition among unscrupulous "employers, a defective apprenticeship system, and the employment of in-"competent hands, whereby the usefulness and respectability of our pro-"fession is endangered; and believing it to be the natural right of those "who toil to enjoy to the fullest possible extent the wealth created by their "labor;

"Therefore, we, the Metal Polishers, Buffers, Platers, and Brass Workers' "International Union of North America, pledge ourselves to labor unitedly "in behalf of the following principles: (1) Reduction in hours of work-"day. (2) Government ownership of national monopolies. (3) Election "of all public officers by popular vote. (4) Abolition of government by "injunction in controversies between capital and labor."

Hours of work and wages a matter for agreement between employer and employee.

Here we have a brief statement of the objects of the organization. No laboring man can find me making any objection to his insistence upon reduction in the hours for work. That is a matter which he must, of course, work out with his employer who looks at it from his own standpoint. The employer knows how far competition will enable him to make concessions. I could not give an intelligent opinion; but if the mutual interests of all should lead to an eight hour law no man would be more pleased than I.

The abolition of government by injunction in

We are not concerned here with the planks favoring the election of public officers by the people, or the government ownership of monopolies. But we are concerned with the

controversies between capital and labor.

last proclamation of the purposes of the union, viz, "the abolition of government by injunction in controversies between capital and labor."

If your honor please, this gives me the text for the great bulk of the argument I propose to make.

A great many well-meaning people think that government by injunction is something new, a late invention of capitalists to assist in oppresing the laborer, and of only modern introduction. A great many men honestly believe it a novelty. They have been taught so by politicians who ought to know better, and by some who do not, for your average demagogue is a man without much knowledge but with excessive lung capacity.

Meaning of government by injunction.

"Government by injunction!" What does this mean? It does not mean in this case that any one is compelled to do something by the order of the court. It is not claimed that we are asking the court to order any of these defendants to do something. And when we say to gentlemen on the other side that if they are not doing the things proved in this case, there can be no harm in the Court saying to them, by way of precaution, that they must not commit them, they answer that the order of injunction is a "stigma." The "stigma" is probably deserved, for it is a singular fact that when the order of the court is in force the trouble ceases. When the injunction is removed, as it once was, the disease broke out. The court will judge as the surgeon does when he puts his finger upon the sore spot.

Injunction orders a man to desist from violating the law.

An injunction in a labor case does not require a man to perform any duties. It simply orders him to desist from doing things that are contrary to law, or injurious to his neighbor's reputation or property or rights. In the equity court, the great bulk of the cases that are daily heard are cases of injunction, and they are heard and decided by the judge only. Let me give some illustrations — not so much for your Honor's benefit, who knows the law so well — but for these misguided men. Two neighbors possess adjoining lots. One says to the other, "These two feet belong to me." The neighbor says, "Why, that fence has stood there for twenty-five years. The stronger man takes the law into his own hands and undertakes to move the fence. What does his neighbor do? He goes to your Honor and the man is enjoined from moving that fence until the title to these two feet is determined. And the title may be settled without a jury.

If a disreputable house is kept in a neighborhood and is a nuisance, while the inmates may be punished, yet the neigh-

bors may come to your Honor and state the facts and your Honor issues an injunction, closes it up, and drives them away. No trial by jury here.

An injunction closes a disreputable house.

Somebody fouls the stream so that life is unendurable, or property is depreciated. The citizen comes into court and asks for an injunction. The court lays its hands upon the offender, compels him to desist, and without trial by jury protects the citizen, even against a great city which may be fouling the stream almost from necessity. There is no trial by jury.

Injunction prevents a citizen or a city from fouling a water course.

Suppose there is a right of way in dispute over my farm. A man has been using it a great many years. I say, "It is my land." I say, "He shan't go across it." He goes into a Court of Equity and alleges he has been prevented from using what belongs to him, and the Court prevents me from interfering with his right. The Court settles a property right and without a jury.

Settles land controversies.

These are only a few instances of every-day occurrences in which the ordinary citizen has his rights settled in equity by decrees of injunction. The principles are as old as civilization in English law. Why shall this union, or any other labor union, claim special privileges, and demand an exemption from the laws that reach everybody else. They do not constitute the whole body of laborers. On the contrary, they represent only a minority. And yet they would have special privileges for this minority, in order to enable it to triumph over the majority. Was there ever such a preposterous claim?

The principle as old as civilization in English law

Have the workingmen ever considered that the Supreme Court of every State in the Union, to which the question has been carried, has decided unanimously that injunction is not only the proper, but almost the only, remedy in a court of justice in disputes between labor and capital, where the controversy is carried to the point of war between them. Let me instance the Courts of Pennsylvania, New York, New Jersey, Vermont, Massachusetts, Virginia, Missouri, and Indiana—composed of men of every shade of political opinion and education. The remedy has been applied in the Circuit Court of the United States in almost every circuit. But finally, let me refer to that great Court, the Supreme Court of the United States; the great arbiter of International questions as well as of the rights of the citizen. We all remember that Mr. Debs undertook to disregard an injunction issued by the United States Court in a labor controversy. He was summoned for contempt, tried, convicted and

Supreme Court of every state in the Union has decided that injunction is the proper remedy in a court of justice for settlement of disputes between capital and labor.

The Debs case before the

United States Supreme Court.

sentenced to jail for six months. He took an appeal to the Supreme Court of the United States by writ of *habeas corpus*. That court unanimously decided that he was properly enjoined, tried, and convicted; and remanded him to jail; and he served his time.

Republican and Democratic judges unanimous in their opinion on the Debs case.

We all know that this court was then composed of five Republicans and four Democrats. They were men of independent thought and action. We have had many instances of division of opinion among them. But in this case they were unanimous; Justice Jackson being absent from illness at the time. When every shade of political opinion was present upon the bench, certainly their agreement should be conclusive evidence that the law is clear.

Majority of members of Union are intelligent and want to obey the law, but walking and talking delegates use the organization for selfish and corrupt purposes. Wear good clothes and live high at the expense of their victims.

Now, what I have just been saying is addressed to honest, intelligent members of the union who want—and I think the majority of them do—who want to obey the laws of the land, and who do not want to feel that by their conduct they have set themselves outside of the law, and do not wish to be law-breakers, or considered as such. Certainly this class must be large, although their influence seems sometimes to be small. There is another class of men, and they are the active and aggressive men in the organization, who use these organizations for their own purposes. They do not care how many homes they make desolate. Whenever there is turmoil, and labor is on the streets instead of in the shop, these walking and talking delegates are in their element. They are living and fattening on the misfortunes they have created, and wear good clothes and live high while their victims are scurrying for bread and meat.

The walking delegate knows he will "lose his job" when courts take action.

These people know that their business is at an end when the Courts take hold of them, and if they can only get the Legislature to prevent the Courts from shutting up their business they will be enabled to ply their ugly trade.

I have always understood that the Metal Polishers' Organization, (I will have some proof of it from their books presently) is one of the most aggressive organizations in the country. They seem to be perpetually in turmoil.

Metal Polishers the most aggressive organization in the country. Perpetually in turmoil.

The very fact that the preamble to their constutition demands the abolition of government by injunction in controversies between capital and labor, makes me believe that those who are in the lead in this organization look to and expect to resort to radical measures to carry their point.

No good citizen is ever bothered by government by injunction. It doesn't prevent him from buying his clothes or groceries where he pleases, or working when, and where, and

for what wages he pleases. It simply says that he shall not interfere with the same right in other people. Is that a hardship? Certainly not to any good citizen. It may prevent boycotting. It may stop picketing. It may prevent and punish assault. No good citizen can object to this. The restless, anarchistical element no doubt hates the hand that strikes it down. If they only could require a criminal prosecution instead of an injunction these men know they could block the Courts. First, they would have a preliminary hearing, then the Grand Jury, and then a separate trial by jury for each individual, consuming in this controversy alone more than a whole year in a single labor dispute. How long would it take to try each defendant in this case, numbering over two hundred? We have been engaged in one trial for fourteen days.

No good citizen bothered by government by injunction Can work when, where and for what wages he pleases. Stops boycotting and picketing.

I have made the charge that the restless and apparently governing element in many of the unions look to violent measures when peaceful remedies fail. I do not wish to make this applicable to the individual members. I am referring to the leaders. I have strong proof. I hold in my hand the official record of the proceedings in Congress, known as "The Congressional Record."

Certain elements of the Unions look to violent measures when peaceful remedies fail.

The labor leaders in order to get rid of government by injunction had the following bill introduced, and it passed the Senate last winter in the following form.

They have a sort of "shuttle cock and battle door" way of doing in Congress. If a ticklish bill comes into the House first, they pass and ship it over to the Senate. And vice versa. The last body to receive the bill has it on its conscience. The following is the shape in which the bill passed the Senate:

Attempt to secure Congressional action preventing government by injunction. Bill passed the Senate.

"A Bill to limit the meaning of the word "Conspiracy" and also the "use of "restraining orders and injunctions" as applied to disputes between "employers and employees in the District of Columbia and territories, or "engaged in commerce between the several states, District of Columbia, "and territories, and with foreign nations.

"Be it enacted, etc. That no agreement, combination. or contract by or "between two or more persons to do, or procure to be done, or not to do, or "dispute between employers and employees in the District of Columbia or "in any territories of the United States, or who may be engaged in trade "or commerce between any territory and another, or between any territory "or territories and any state or states, or the District of Columbia, or with "foreign nations, or between the District of Columbia and any state or "states, or foreign nations, shall be deemed criminal, nor shall those en- "gaged therein be indictable or otherwise punished for the crime of con- "spiracy, if such act committed by one person would not be punishable as "a crime, nor shall such agreement, combination, or contract be considered "as in restraint of trade or commerce, nor shall any restraining order or in-

"junction be issued with relation thereto. Nothing in this act shall exempt "from punishment, otherwise than as herein excepted, any person guilty "of conspiracy, for which punishment is now provided by any act of Con- "gress, but such act of Congress shall, as to the agreements, combinations, "and contracts hereinbefore referred to, be construed as if this act were "therein contained."

House referred bill to Judiciary Committee, which reported it back with amendment.

When this Bill came to the House it was referred to the Judiciary Committee which reported it back with the following amendment. The Committee recommend to strike out the following words:

"Nor shall such agreement, combination, or contract be considered as in "restraint of trade or commerce."

Secondly to insert the following words:

Representatives of labor demanded defeat of bill as amended.

"Provided, *that the provisions of this act shall not apply to threats to injure the "person or the property, business or occupation of any person, firm, association, or "corporation, to intimidation or coercion, or to any acts causing or intending to "cause any illegal interference, by overt acts, with the rights of others.*"

The leaders and lawyers of these organizations flooded the House of Representatives with demands to beat the law as amended, and it was beaten at their request, although the chairman of the committee protested that the amendment had met the approval of labor leaders with whom he had been in conference. The radical fellows were too much for the conservative element. Organization after organization said, "beat the bill; we don't want it in that shape."

They do not wish to be prevented from threatening, assaulting, etc., when in their judgment the occasion requires.

What does that mean? They do not wish to be prevented from threatening, assaulting, etc., where, in their judgment the occasion requires.

Judge Dwyer: Are you sure that took place, Mr. McMahon?

Mr. McMahon: This is the Congressional record in my hand. It is as much an official report of what occurred in Congress as a report of the decision of the Supreme Court of the State of Ohio, when found in the proper volume. I am glad my friend's conscience pricks him a little bit. He says he don't think it took place. That is an open confession, Judge, that you do not think it right, if it did take place.

Opposing counsel both Democrats, but not in the same boat.

Judge Dwyer: We are both in the same boat, both Democrats.

Mr. McMahon: Not exactly, Judge, in the same boat. I haven't surrendered my manhood entirely. I used to be an active man in the organization you and I belong to, and still believe in the principles, and vote the ticket, but I cannot follow these new leaders who would lead me, a sworn officer of the court, to violate the law of the land, and to oppose those who do. Now, what I have said, I say in all kindness,

and do not mean to be severe. I only wish to lay before the intelligent workingman the consequence of a blind following of his reckless leaders. I want him to study before he permits these men to place him in the position of a law breaker, and a criminal.

Labor leaders connive at violence, threats, and use the boycott.

Many of our leaders connive at violence, threats, and other unlawful means. They go a step farther. They use the weapon called "Boycotting," the deadliest enemy to the peace, prosperity, and happiness of a community. It is fast becoming a game for two to play at, as in Cleveland, where the boycotters were themselves boycotted by other citizens until the whole community was at war. No community suffers itself to be terrorized for any length of time. The extent to which this has been done is shown by the little dodgers I hold in my hand. Let me read: On one side is "Scab," Pearl, Troy, American, City Steam. Don't patronize "scab" laundries. On the other side, "Union," Crescent, Globe. Patronize union laundries." We know of the laundry strike last summer. We know it led to violence. Your Honor sent a young man to the workhouse who confessed to an assault, and he languished his time, sixty days, in the workhouse. I read further: "Union men, remember that Mrs. George Makley's horse-shoeing shop, 112 East Fourth Street, is on the unfair list, and is not worthy of the patronage of those in favor of Union principles." Even the poor widow is hounded by these reckless men.

Specimens of boycott literature, the use of which is unlawful.

"Union men, remember that S. J. Patterson, 224 South Ludlow Street, is unfair to organized labor, and is not worthy of your patronage."

"Union men, remember that the barber shop at 2015 East Fifth Street, is on the unfair list. Committee."

"Union men and all friends of organized labor, remember that Harry Hershey, at Phillips House, and 120 South Main Street, is running a "Scab" shinning parlor." He may have a widowed mother to support, for all we know.

"Union men, remember that Jacob Young Sons and Saylor Brothers are 'scabs.' They are furniture van drivers. Those that employ these men will be watched."

"Remember the Stomps-Burkhardt Company's chairs are finished by scabs. Watch for them."

I suppose my friends will say, "These are irresponsible circulars, put out by irresponsible parties."

"Here is the new Union paper!"

When we adjourned court last evening we were met at the foot of the steps by the newsboys with "Here is the new Union paper," and it went like hot cakes among the polishers.

I find in one column what is called "Unfair List," a whole column to the bottom, "of houses painted by non-union painters when union men could be had." "Those contemplating building should be sure they were painted by men paid respectable living wages," etc. Here is a list of the printers boycotted, "The United Brethren Publishing House, Walker & Walker, *Volkszeitung*, the German newspaper," coal dealers, and draymen, fruit dealers, and so on, and so on.

As absolute a violation of the rights of the individual, as if the perpetrator of the outrage had taken a club and beat him on the head. Every member of the Union personally liable for this violation of law.

Now, what is the standing of these declarations in law? As absolute and complete a violation of the right of every individual whose name is there as if the man who had authorized or published the paper had taken a club and hit him on the head. And each member of the union is personally liable, even though the boycott was voted in his absence. He has agreed to be bound by the majority. When men use the methods denounced by the law, to further their end, they are the unfair men, and more than that, they are the men that are guilty of the violation of the law. They are law-breakers.

Now, while I am speaking in that connection, I wish to show in reference to the organization under trial, that it is officially and habitually engaged in this illegal business. On page 239, of the minutes of the Metal Polishers' Union, I find the following:

Metal Polishers' Union habitually engaged in illegal business. Minutes show Union appointed a committee of ten to violate the law daily.

"The following brothers were appointed on the Boycotting Committee: John Braun, Benj. Closterman, H. Fitzmaurice, E. Fryer, John Burgoyne, Ira Pace, M. Raskin, John Kelley, D. P. Ryan, Ed. Sizer, Chas. Brigman, T. McBeth, Frank Snauble, Fred Lynch, F. O. Rourke."

In other words, this book of minutes admits and confesses that this organization appointed a committee of ten men to daily and habitually violate the law of the land.

Before I pass to the decisions upon the subject of boycotting let me call your honor's attention to another matter. Let us get exactly what this controversy is.

The organizer of this Union is a "bully," and imported to do this disreputable work.

We find some testimony indicating that Orr was brought from Cincinnati for the purpose of organizing this shop. The character of Orr was clearly developed in testimony and impeached by one of the metal polishers. He was asked if he knew Orr. His answer was: "He didn't associate with that kind of people"; and yet, Orr was the big dog in the fight. He was a "bully," and probably imported as such, but he struck snags when he run amuck with Mr. Kirby.

The policy was to spread the work out

Now, what was the controversy? The controversy was that the polishing-room was not turning out sufficient work,—not doing what it had done or ought to do. Was the union

responsible for this? The underlying principles of labor unions are not numerous. Amongst them is one that a man must drop his tools the moment the time is up. No such thing as finishing the job. Why? To spread the work out so as to require the employer to put more men to work.

so as compel the employer to put on more men.

Let me show you, as illustrating my point, one of the rules prescribed in the Constitution of the International Organization:

"Section 12, Article III. It shall be compulsory for the President of each Local to instruct all shop committees to see that every man belonging to their respective unions be instructed to stop and start work at the hour appointed by said union, subject to a fine of not more than $1.00."

It is the imperative duty of the president to stop work at the appointed hour, the hour appointed by the union, not by the manufacturer.

Now, these remarks as to going slow about the work, are intended to meet this case, and I would not have indulged in them if they were not applicable. Mr. Kirby and the foreman found that the work in that shop, after these men had become initiated was not what it had been before. Orr was getting in his work as an organizer, and complaints were made, not that the men were'nt good workingmen; there were plenty of good workingmen in there but the virus of the union was operating. "You must go slow and leave room for somebody else." And they are slurring their jobs intentionally. Finally, Mr. Orr became insolent to Mr. Stewart, the foreman, saying to him—"Mr. Stewart I might as well tell you, that man," referring to the only non-union man in the room, "can't work here any longer." Mr. Stewart said, "He will work here as long as I say so." "Well, he can't work here. You may as well understand it now, we are all sworn to stick together;" Mr. Stewart reported this to Mr. Kirby, and inside of thirty minutes they were all discharged. Some of these men came upon the stand and pretended that they were laid off, not discharged. That was not true.

Dismissal of the only non-union man in the shop demanded by the organizer, and the men had sworn to stand together in enforcing the demand. Immediate discharge followed.

They knew that they were discharged for they were told to go to the office and get their money. This took place on October 9th, and on the night of October 9th, the report of the shop committee was made to the union. Here is the official report:

"Brother Orr reported all brothers employed at The Dayton Manufacturing Company were discharged until such time as the Company saw fit to take them back."

What becomes of the testimony now of Brigman and that class of men who came upon the stand and said that they were simply laid off, when their own books show that the Shop Committee reported officially the same night that they were discharged.

When a man is discharged by the employer, the relation existing between the two is dissolved, The right to discharge is the equivalent of the right to quit.

This has an important bearing on the further questions that are coming along. Whether the men were discharged is one thing, or whether they went out on a strike is another. After a man has been discharged from a manufacturing establishment, it is the same as in any other contract, the relation between the two is dissolved. The relation is ordinarily mutual. The laborer can quit when he pleases. He lays down his tools and walks out and nobody fought harder for that principle than the unions in the celebrated railroad case. It is the bottom principle of the "strike." The right to quit at even the most inconvenient time to the employer. And the most inconvenient time is usually chosen. The right of the employer to discharge is the equivalent.

That being the case, and those people being discharged, the relation between them was entirely severed. They were told so, and in a short time they took their money, after an ineffectual attempt at a conference.

After men are discharged they have no business in the shop.

Now, if your Honor please, here is a vital point in this case. After they were discharged, they had no further business in that shop. They were not out on a strike. I accept the statement of the situation made by one of their attorneys, Mr. Hallanan. They had not made any demand for wages; they had not made any demand for improved sanitary conditions; or demands of any character, except, "You shall not keep "Dummy". He doesn't belong to the organization.

Workmen have the right to discuss the question of wages with their employer and their co-employees, and to urge the latter to join with them.

Now, I very well understand the proposition of Judge Dwyer, that if the employees in an establishment think they are underpaid, they have a right to present that question to their employers, and they have an undoubted right to speak to their co-employees and to discuss the question with them, and to urge them to join with them.

That proposition has never been disputed as a question of law. There is only one qualification which is sometimes made by the courts, when the men are under written or other contracts for a definite period of time as in our case.

Now, these men having been discharged, and on the next day having had an interview with Mr. Kirby, in which he presented to them a contract, if they wished to return to work, which counsel denounced as "slavery," etc., the relations were permanently severed when all negotiations failed

and they went out. They now began a warfare upon The Dayton Manufacturing Company, and the organization took it up.

Warfare on the Dayton Manufacturing Company begins. A war of revenge to show the plaintiff the power of the Union.

Every usual method was adopted to prevent it from conducting its business as its officers saw fit, for the purpose of annoying Mr. Kirby and the men he might employ; to prevent the people from going there to be employed, or doing the work they used to do, or preventing other people from doing the work that was done there.

All the subsequent conduct of these people is explained only upon the theory that they were making a war of revenge upon the plaintiff to show it and the community their power. The pickets were placed and remained there for a long time. The polishing work of the establishment was done at Hamilton, Cincinnati, Springfield, and at different places. The defendants went out in the community and gave orders that other shops in Dayton should not do it; and then they withdrew the orders if the discharged men were put on the work. All this happens in the land of the free, the land of so-called liberty.

Plaintiff resumes work, and is characterized as a "slave-driver from the South." The "slaves" are the men who surrender their manhood and swear to obey the orders of the Union, legal or illegal, in accordance with the Union pledge.

Now, Mr. Kirby later concluded he would do the work in the shop again. He employed Hawkins. Hawkins, it is said, has been in the penitentiary. The information of our friend upon this subject may be no more reliable than his information as to the birth place of my friend, Mr. Kirby, and the church he belongs to.

Mr. Hallanan made a great bugaboo; he thinks Kirby is a bad man because he is a "pillar of the church," and denounces him as a "slave driver from the South," which is news to my Yankee client, who hails from Troy, New York. He reviles him as the oppressor of labor, etc., etc. And yet he would have us believe that all this war upon Mr. Kirby by his former slaves was solely to get back into his employ to again undergo his slavery and hear the crack of his whip. Speaking of slavery, who are the slaves in this community:—the men who surrender their manhood to a secret organization and under oath agree to abide by all its orders, legal or illegal. Let me read the pledge taken on initiation into the Metal Polishers' Union.

"I do hereby solemnly promise on my honor as a man that I will not "reveal to any person or persons any business or proceedings of any meet- "ing of this Local, unless by order of this Local, to any but those I know "to be members in good standing; and I furthermore promise, to the best "of my ability to abide by the By-Laws, Constitution, and prices of this "organization, and I will at all times abide by the decision of the legal "majority; I will use all honorable means to procure employment for the

"members of this organization in preference to others; I will not wrong a "brother, or see him wronged if in my power to prevent. I do further "promise to assist a brother of this organization when and wherever I may "find him in distress."

Men want to get out of the Union, but ostracism, fire, and sword threaten them, and in order to live in peace and earn bread, they belong to it—but are heard from when election day comes.

In other words, if forty-nine men, against forty-eight, vote for any measure I agree to abide by that decision. There is no qualification. I say that makes the most despicable, abject tyranny. I know of many good citizens who wish that they were out of it, but they know that ostracism stares them in the face, that fire and sword is held over them and theirs, and in order to live in peace and earn bread they belong to it. These good citizens are generally heard from in a quiet way when the election comes around. The Australian ballot is the weapon they yield. The walking delegate, the political laboring man, or the timid judge, all find their reckoning on election day. When men surrender their conscience and their good name to the action of an irresponsible majority, they must not complain if the Courts treat them all as conspirators when the majority enters upon a course of violence or other illegal conduct. They have made their own beds. They have surrendered absolutely to the majority. And if the radical men attend the meetings and vote illegal measures they are bound, and have no right to complain.

Plaintiff has a special policeman appointed to protect his employees. A bitter protest from the Union, followed by his arrest for carrying concealed weapons.

But let us proceed with the facts. After Mr. Kirby began to employ men, he found he needed protection, and so he had Jerry Hawkins appointed special policeman on the 3d day of February. Now, I refer again to the minutes. On February 7th the Metal Polishers (on page 239):

"Moved and seconded, That we appoint a special committee to investi- "gate why they are swearing in special police to work in The Dayton Manu- "facturing Company."

Upon the 13th of February:

"Mr. Leo, a committe appointed to investigate The Dayton Manufactur- "ing Company, having special police sworn in, made a full report."

We haven't got that report. I don't know what is in it.

"Moved and seconded that the Committee be continued and they be "given full power to act."

Upon the same page, February 13th, just about the time of the injunction:

"Moved and seconded, that a committee of three be appointed to write "up the full report from the time of trouble, and publish the facts in the "newspapers."

Now, I want to refer to what took place before the Police Board, and to the arrest of Jerry Hawkins, and to the arrest of the man John Doe, which happened later in the month of May. I want to bunch them together, because they show the intent of the Union. The pretext now is that the objection against Jerry Hawkins was that he had been in the penitentiary. Did they not exert all their energies to get him into the Union? Weren't they drinking with him? But when you look at their minutes the protest was not that improper men were being appointed as special policemen, but that The Dayton Manufacturing Company was having special police sworn in. What had Local No. 5 to do with that? There were no metal polishers in there. They had been discharged months ago, on the 9th of October. This was the 9th of February. And then they harass Jerry Hawkins; they persecute and prosecute him for carrying concealed weapons, and a timid judge fines him $50.00. Some of them come and see the sheriff and they visit the commissioners for fear they may be taking steps to protect life and property. How any people with innocent designs and no intention of intermedling with their neighbor's property or employees, could have such special interest in this employment of special policemen I cannot fathom. There is only one explanation. They wanted to deprive the city of adequate police protection to enable them to carry on their system of intimidation and violence. And when the little smart fellow from the other end of town who thinks the great principles of unionism are to be advocated by fighting somebody, runs up against a better man, and is slapped in the face, the Union takes hold of his case, pays Ritter to look after it, and hires a lawyer to prosecute the defendant. At this time it seems that three cases are pending, in all of which the Union takes an interest to the extent of hiring a lawyer to prosecute somebody. And this brings something to my mind. My friend Judge Dwyer, in his defense of Unions adopting a scale, referred to the fee bill of the lawyers, and made quite a parade of what he called our minimum. As we are trying a "scab" case, I would call my friend's attention to the fact that the Union is not above paying "scab" prices for its lawyers, if the record of the Union is right in saying as it does, that the lawyer had agreed to try three cases of such importance for $35.00. That was not you, Judge, I am sure. But I find it in the minutes in black and white. What an awful "scab" price to pay, as any lawyer knows at sight.

The Union fears the police authorities may be taking steps to protect life and property, and want to deprive the city of adequate police protection to enable them to carry on their system of violence.

The Union pays its lawyers "scab" prices.

To return to what I was discussing: The country has a

Union men withdrawn from the National Guard.

suspicion that the withdrawal of union men from the National Guard has a bad look. I have always believed and still believe in the volunteer soldiery. The Constitution of the United States declares that "a well regulated militia is necessary to a free state." I never believed in a large standing army. But what do we see? It is not worth while to conceal the facts, for it stares us in the face that the labor organizations of the country are discouraging enlistments and are gradually drawing their members from the National Guard. A feeble effort was made to deny it by a witness on the stand. Recently militiamen in New York, Pennsylvania and Virginia resigned or mutinied because they were called into service to preserve order. Our friends do not seem to like the militia. They hate the standing army, and they are not friends of the established police, and they do not wish their members to belong to the militia.

If the peace and prosperity of the country needs a larger standing army it will come. History teaches us that law and order must prevail. Justice is never permanently secured by violence.

What does this mean? My friend, the Judge, indulged in a tirade against a large standing army. The action of his clients and their friends is demoralizing the volunteer force of the country, and you may depend upon one thing, viz: there is too much wealth, too much dependent upon law and order, too much at stake in this vast expanse of business and prosperity to be without adequate protection. If it needs a large standing army, that army will come. And whenever, if the time ever comes, these organizations believe themselves to be strong enough to resort to open violence, they will discover that the leaders miscalculated their powers. The conservative power of the nation—including the laboring men themselves—will soon restore peace and quiet. All history teaches us that law and order must prevail. It cannot be otherwise. Even in the most savage tribes there is a method of preserving peace at home; and the laboring man who thinks he is oppressed and that violence will support his claims, will only find his liberty curtailed and his privileges diminished. Then he may find himself in a position of civil as well as social subjection. But if the union will confine itself to legitimate combination, promote education, good fellowship, and brotherly love; if they will stand together for better hours, better wages, and good sanitary conditions and kind treatment, they will deserve and receive the support of good people, and by public opinion compel that justice which is never permanently got by violence.

Any organization which

We have already seen by an investigation of the minutes of this organization that a regular boycotting committee was

appointed, and that they engaged in the business. I was speaking of the boycotting committee and showing the methods adopted by them, in violation of law in publishing officially what they called "unfair list," for the purpose of showing the character of the organization in practice. It has become very common practice. I have no hesitation in saying, as a lawyer, that any organization, secret or open, which indulges systematically in what is known as boycotting is an illegal organization.

engages in systematic boycotting is an illegal organization The highest courts have so declared.

To support my proposition, which would have no force if it was not sustained by the Courts, let me refer to the decisions of the highest Courts in the land.

Here follows an exhaustive review of the decisions of the highest courts in the land, which will command the attention and endorsement of the lawyers and business men of the country. Should be read by every good citizen.

Take first the Maryland case, decided by a Court of six eminent lawyers, most of them of democratic training. The syllabus of this case (Lucke vs. The Clothing Cutters and Trimmers Assembly, etc. of Baltimore City, 77 Md. p 396) reads as follows:

"Where an employe, a non-union man, who is performing the duties of his position to the entire satisfaction of his employers, who would gladly have retained him in their service, is discharged in consequence of a threat from a labor organization that in case he is any longer retained, it will be compelled to notify all labor organizations of the city that the business house of the employers is a non-union one, and thus subject them to great loss, such interference by the labor organizations is wrongful, and an action would lie against it by the non-union employee for the damages he has sustained in consequence of such discharge."

Article 23, Section 37, of the code, in authorizing the formation of trades unions "to promote the well-being of their every-day life, and for mutual assistance in securing the most favorable conditions for the labor of the members, and as beneficial societies," did not mean that such promotion was to be secured by making war upon the non-union laboring man, or by any illegal interference with his rights and privileges."

If a non-union man is discharged because of threat against his employer by a labor organization, an action would lie against the Union by the non-union employee, and the financially responsible members of the Union are liable for the damages he has sustained.

Now, this was a suit against an organization, as an organization. It shows that when a man's establishment is threatened with a boycott because he employs a non-union man, the persons who threatend him violated the laws of the land, and they are liable for damages.

I read next from the 59th Vermont, State vs. Stewart et al. (page 273). This was an indictment for a conspiracy to hinder and prevent the Ryegate Granite Works, a corporation doing business at Ryegate, from employing certain granite cutters, and for hindering and deterring certain laborers from working for the said corporation. This, of course, being an indictment, was against individuals. What does the court say? And this is a very instructive case, and I am sorry Judge Dwyer is not here to hear it. I will read it in his absence, from page 286:

To hinder or prevent an employer from employing whom he pleases, or to hinder or deter workmen from working for him, is a criminal conspiracy; a condition of things at war with every principle of justice. An influence exerted by a secret association of conspirators, actuated solely by personal considerations.

"Suppose the members of a Bar Association in Caledonia County should combine and declare that the respondents should employ no attorney, not a member of such association, to assist them in the defense of this case, under the penalty of being dubbed a "scab," and having his name paraded in the public press as unworthy of recognition among his brethren, and himself brought into hatred, envy, and contempt, would the respondents look upon this as an innocent intermeddling with their rights under the law? The proposition has only to be stated to disclose its utter inconsistence with every principle of justice that permeates the law under which we live."

Now, after a great deal of discussion and citation, on page 289, the Court says:

"The principal upon which the cases, English and American, proceed, is, that every man has the right to employ his talents, industry, and capital as he pleases, free from the dictation of others; and if two or more persons combine to coerce his choice in this behalf, it is a criminal conspiracy. The labor and skill of the workman, be it of high or low degree, the plant of the manufacturer, the equipment of the farmer, the investments of commerce, are all in equal sense property. If men by overt acts of violence destroy either, they are guilty of crime. The anathemas of a secret organization of men combined for the purpose of controlling the industry of others by a species of intimidation that works upon the mind rather than upon the body, are quite as dangerous, and generally altogether more effective, than acts of actual violence. And while such conspiracies may give to the individual directly affected by them a private right of action for damages, they at the same time lay a basis for an indictment on the ground that the State itself is directly concerned in the promotion of all legitimate industries and the developement of all its resources, and owes the duty of protection to its citizens engaged in the exercise of their callings. The good order, peace, and general prosperity of the State are directly involved in the question."

On page 290, the Court says:

"The exposure of the legitimate business to the control of an association that can order away its employees and frighten away others that it may seek to employ and thus be compelled to cease the further prosecution of its work, is a condition of things utterly at war with every principle of justice, and with every safeguard of protection that citizens under our system of government are entitled to enjoy. The direct tendency of such intimidation is to establish over labor and over all industries, a control that is unknown to the law, and is exerted by a secret organization of conspirators that is actuated solely by personal considerations, and whose plans, carried into execution, usually result in violence and the destruction of property."

I read from the 55th Connecticut, (46–47).

When two or more persons combine to commit a misdemeanor such combination

"If two or more persons combine to commit a crime or misdemeanor, such combination is in itself a crime. And where the end sought is in itself unlawful, a combination to use criminal means to accomplish it is a crime. The act of 1878 (Session Laws 1868, ch. 92), provides that "every person who shall threaten or use any means to intimidate any person, to compel him to do or abstain from doing any act which he has a legal right to do, or shall injure or threaten to injure his property with the intent so to intimi-

date him, shall be liable," etc. The defendants conspired to intimidate the publishers of a certain paper called the Journal and Courier, to compel them to discharge against their will certain of their workmen and to employ the defendants and such persons as they should name. Held to fall within the prohibition of the Statutes.

"The defendant's purpose was to deprive the publishing company of its liberty to carry on its business in its own way, although in doing so it interfered with no right of the defendant. The motive was to gain an advantage unjustly and at the expense of others, and therefore the act was legally corrupt. As a means of accomplishing the purpose the parties intended to harm the publishing company, and therefore it was malicious.

"It was also a crime for the defendant to seek to injure other workmen of the publishing company by depriving them of their employment. These workmen had just as good a right to work for the publishing company as the defendants had, and their right is entitled to the same consideration and protection.

"The defendants attempted not merely to injure the publishing company, but all persons who should patronize that company by subscribing for their paper or advertising in it. Held that such conduct must be regarded as prima facia malicious and corrupt.

is a crime. A combination for the purpose of intimidating an employer and compelling him to discharge certain of his workmen is a violation of the statutes.

Now, I read from 53 New Jersey Equity Reports, Thomas vs. Barr, which was a case of an injunction (page 101). This was a newspaper suit where the complainant brought suit against the Essex Trades Council, the Typographical Union No. 103, of Newark, et al. The decision was as follows:

Malicious injury to a person's business is actionable. Newspaper proprietor used plate matter in disregard of the order of the Union. Trades Council issued a circular boycotting the paper and ordering Union men and the public to cease buying and advertising in it. Trades Council guilty of violation of the law and members financially liable.

"A person's business is property, entitled under the Constitution to protection from unlawful interference. Every person has a right as between his fellow citizens and himself, to carry on his business, within legal limits, according to his own discretion and choice, and with any means which are safe and healthful, and to employ therein such persons as he may select; and every other person is subject to the co-relative duty arising therefrom, refrain from any obstruction of the fullest exercise of similar rights by others."

"Malicious injury to a person's business is actionable. An injury to the business of another is malicious and actionable if done intentionally and without legal excuse."

"B, the proprietor of a daily newspaper determined to use plate matter in the make-up of his paper notwithstanding the interdictive resolution of the local typographical union, of which all his employees were, at the time, members. On this some of them left his employment, others remained, and, in consequence, lost their said membership. The Union thereupon withdrew its indorsement of the paper, and reported the matter to the Trades Council, a representative association in which it and other trades unions were affiliated, the whole comprising a body of operatives in the County of Essex, of a purchasing capacity of $400.00 a week. After the publication, by each side, of its version of the difficulty, a circular was issued by the Trades Council calling on all friends to boycott the paper and to cease buying and advertising in it. A boycott of a newspaper started under the circumstances, in pursuance of which, not only the members of the various societies were, by their rules, but the public was, by the circular, which was widely distisbuted, called on to cease buying or advertising therein, and personal application was made to actual advertisers, by the distribution of printed circulars and resolutions of the societies suggesting that they discontinue their advertising therein, even if they had made con-

tracts so to advertise, enforced by a threat in the guise of a suggestion, that if they did continue to do so, they would also incur the enmity and opposition of organized labor, followed by damage to the proprietor of the paper, for loss in circulation and advertising, is an actual wrong."

"Even where there is a legal remedy, equity will interfere by injunction to prevent (1) an injury which threatens irreparable damage, and (2) a continuing injury, when the legal remedy therefor may involve a multiplicity of suits. The criterion of the application of this jurisdiction is the inadequacy of the legal remedy, depending on whether (1) the injury done or threatened is of such a nature that, when accomplished, the property cannot be restored to its original condition, or cannot be replaced by means of compensation in money; (2) whether full compensation for the entire wrong can be obtained without resort to a number of suits."

"The facts in this case warrant the issuing of an injunction to restrain the defendants from certain acts which threaten a continuing injury and probable ruin of the complainant's business, the legal remedy for which is inadequate and would involve a number of suits."

Boycotting is a violation of the rights of fellow citizens and under the ban of the law. Picketing and distribution of boycott circulars are violations of the law.

Now, I read next from Michigan, 118th, Mich. page 497, decided in 1898, case of Beck vs. Railway Teamsters' Protective Union.

"The law will protect employers against the unlawful interference of Trades Unions in their right to employ whom they please, at such price as they and the person employed can agree upon, and to discharge them at the expiration of their term of service, or for violation of their contract.

"Organization into unions by workingmen for the securing of better and uniform wages, and the use of persuasion to induce other workingmen to join the union, and to refuse to work for the established wage, and the presentation of their cause to the public in newspapers or circulars, in a peaceable way and with no attempt at coercion, are lawful." As we have admitted all the time.

"But the boycotting of one who refuses to accede to the demands of the union is unlawful, where the means used to prevent persons from dealing with the person boycotted are threatening in their nature, and tend naturally to overcome, by fear of loss of property, the will of others, and compel them to do what they would not otherwise do, though unaccompanied by acts of violence or threats of violence."

"Injunction will lie to restrain a combination of persons from attempting to ruin complainant's business by bringing to bear upon his customers and employees intimidating and coercive means."

"The picketing of the premises of a person boycotted for the purpose of intercepting his customers and employees, and the distribution of "boycott circulars," containing statement wholly false as to his relations with his employees, pursuant to an avowed intention of ruining his business, though carried out without violence, are, in themselves, acts of coercion which may be enjoined."

"The duty of equity to enjoin the distribution of boycott circulars under such circumstances is not modified by the fact that under ordinary circumstances, where the destruction of property rights by coercive means is not involved, it cannot under the Constitution enjoin the publication of a libel."

An important case to laboring men

Now, this is a very instructive case, and it was upon this, to a certain extent, we based the injunction, a temporary order which your Honor granted. On page 520 the court says:

"It will not do to say that these pickets are thrown out for the purpose of peaceful argument and persuasion. They are intended to intimidate and coerce. As applied to cases of this character, the lexicographers thus define the word 'picket': "A body of men, belonging to a trades union, sent to watch and annoy men working in a shop not belonging to the union, or against which a strike is in progress." Century Dictionary; Webster's Dictionary. The word originally had no such meaning. This definition is the result of what has been done under it, and the common application that has been made of it. This is the definition the defendants put upon it in the present case. Possibly the decree is specific enough to include picketing, but we deem it our duty to place it beyond controversy."

"The decree permits "boycotting by peaceful means," and the ruin of complainant's business by threats of any means short of violence. If, as some authorities hold, the term "boycotting" has no authoritative meaning, then the decree is indefinite, and the defendants have no guide except that they must refrain from actual violence or threats of violence. The authorities do not sustain his proposition. If these defendants had threatened complainant's teamsters that, unless they ceased to work for them and join the union, they have the power and would use it, to induce all merchants not to sell them any goods by which they might support themselves and families, and had carried out this threat by issuing boycotting circulars, and notifying merchants personally, by their committees, that they must cease to sell goods to these men, there would have been no act or threat of violence. But would the boycotting or conspiracy have been lawful? May these powerful organizations thus trample with impunity upon the rights of every citizen to buy and sell his goods or labor as he chooses? This is not a question of competition but rather an attempt to stifle competition. It is a question to the right to exist. If there can be no redress from such wrongs, then the government is impotent indeed. But such a combination is a criminal conspiracy at the common law, and in some states in order to remove all doubt is made so by statute."

who own their own homes or other property. Judgment for $2,500 recovered in the State of Ohio against the Union and its members in a case of boycotting. Judgment sustained by the Supreme Court.

I now come down to see if the question has been decided in our own State. We have a decision by one of the greatest judges of our own State, assisted by two others of high standing. I refer to Judge Taft, Judge Noyes, and Judge Moore of the Superior Court of Cincinnati. This suit was brought against the Bricklayers' Union No. 1 and against not only the individuals, but the Union to recover damages for a loss occasioned to the plaintiff's business by wrongful and malicious conspiracy entered into by defendants to inflict such loss by *boycotting*. This case is important for the laboring man to know. It may be all right for men who have no property and do not own or care to own their own homes, or do not expect to accumulate anything, to run up against the law and incur a liability for damages but it is important for those who expect to be worth something some day to understand that in the State of Ohio judgment for $2,250.00 was recovered against the Union and its members, and that judgment was sustained by the Supreme Court of our State in a case of "boycotting."

I read a statement of the case:

"There were four hundred members in the Bricklayers' Union, being ninety-five per cent. of the trade in the city. The union requested Parker Bros., who were contracting brick layers, first to pay a fine imposed upon one of their employees, who was a member of the union, and second to reinstate an apprentice who had left them, and discharge another. Parker Bros. refused. The union declared a boycott against them, and designated one of the defendants, P. H. McElroy, to enforce it. He continued in the work a number of months reporting progess each week, and receiving $27.00 each week and his expenses for his time," and so on. Verdict for plaintiff $2,550.00. The argument of the defendant was as follows:

"The members of the Bricklayers' Union had a lawful right to decline to work for anyone using Moore's lime. They, therefore, had the right to announce their intention of so doing. They had, therefore, the right to combine to do both. Any loss occurring to Moore & Co. through these lawful acts of the defendants is therefore only *dammun absque injuris*, and gives no cause of action."

Now, that was the argument for the men. (I am reading 23rd Law Bulletin, Page 50.) What does Judge Taft say? Sitting in the higher Court reviewing the case:

"If this argument is sound, the charge was erroneous, the evidence shows no cause for action, and the verdict must be set aside. It assumes two propositions: First, that no act generally lawful, can become unlawful or actionable by reason of the motive or intent with which it is done; and second, that nothing which is not actionable when done by one person, can be actionable or unlawful when done by a combination of persons. In our opinion both of these propositions are erroneous."

"We are dealing in this case with common rights. Every man, can be capitalists, merchant, employer, laborer, or professional man, is entitled to invest his capital to carry on his business, to bestow his labor, or to exercise his calling, if within the law, according to his pleasure, generally speaking, if, in the exercise of such a right by one, another suffers a loss, he has no ground of action. Thus, if two merchants are in the same business in the place, and the business of one is injured by the competition the loss is caused by the other persuing his lawful right to carry on business as it seems best to him. In this ligitimate clash of rights, the loss which is suffered, is *dammun absque injuris*. So it may reduce the employers' profits that his workmen will not work at former prices, and that he is obliged to pay on a highest scale of wages. The loss which he sustained, if it can be called such, arises merely from the exercise of the workmen's lawful right to work for such wages as he chooses, and get as high a rate as he can. It is caused by the workman, but it gives no right of action. Again if a workman is called upon to work with the material of certain dealer, and it is of such a character as either to make his labor greater than that sold by another, or is hurtful to the person using it, or for any other reason is not satisfactory to the workman and he may lawfully notify his employers of his objection and refuse to work. The loss of the material man in his sale caused by such action of the workingman is not a legal injury, and not the subject of action. And so it may be said that in these respects, what one workman may do, many may do, and many may combine to do without giving the sufferer any right of action against those who caused his loss."

"But on this ground of common right where everyone is lawfully struggling for the mastery, and where losses suffered must be borne, there

are losses wilfully caused to one by another in the exercise of what would otherwise be a lawful right, from simple motives of malice."

"We are of the opinion that even if acts of the character and with the intent shown in this case, are not actionable when done by individuals, they become so when they are the result of combination, because it is clear that the terrorizing of a community by threats of exclusive dealing in order to deprive one obnoxious member of means of sustenance will become both dangerous and oppressive."

Boycotting a criminal act. A hateful and dangerous practice which will ultimately divide any community into warring factions.

Now I do not care to go any further on the law of boycotting. There are no two sides to it. The lawyers, without reference to their previous education or political proclivities, have said that boycotting is a criminal act, practically a thing that the courts must stop whenever they are able to stop it. It is a hateful and dangerous practice. It will ultimately divide any community into warring factions.

Let us see how the defendants have acted upon this doctrine. Upon page 277 of the minutes, a committee appeared before this union from the Laundry Union and they were telling the trouble they were having with the "scabs."

Every member caught patronizing a non-union laundry will be fined $2.00. Every member and every member of a member's family caught riding on a street railroad during a strike will be fined $1.00. A most striking illustration of the abject slavery of the Union man.

"Moved and seconded that every member caught patronizing any laundry but the Crescent and Globe laundries until the strike is settled be subjected to be fined $2.00 as per Constitution. Carried." Then the committee from the street car strikers asked to be admitted. They were also given ten minutes and explained that they had a strike on at the Peoples Railroad and asked members to co-operate with them in winning their strike.

"Moved and seconded that any member caught riding on the Peoples line be fined $1.00. Carried."

"Moved and seconded that if a member of any of our brothers' families are caught riding on these cars the brother should be held responsible and be fined $1.00. Carried."

These are striking illustrations of what is meant by putting an institution on what is called the "unfair list." It is a most striking illustration of the abject slavery of the union man. His least action is governed by a vote. He must walk, if they order it; buy bread where they tell him; wash his linen or let it go dirty, if they so order, and be a mere slave.

Interfering between employer and employee when there is a definite contract is a violation of rights, and entitles the

Before closing my argument I wish to draw a distinction in the cases, some of which we have already submitted. Judge Dwyer said the other day that it was not wrong to persuade a man to quit work. I conceded this morning that if a lot of men are working together in an establishment, and the prices are not good, and the hours are not right, or the sanitary conditions are not what they should be, they have a right to talk to each other, combine and complain, and say,

employer to an injunction or an action at law for damages.

"let's get out; lets have higher wages, or shorter hours." I don't dispute that for a moment, that is, assuming that the institution is run, as manufacturing institutions usually are, under a contract which enables the employee to quit at once and the employer to discharge them. But when men are under a time contract, as were nearly all these men working for the plaintiff, the situation is different.

In the 54th Federal Reporter, page 740, in the case of Toledo, Ann Arbor & North Michigan Railway Company vs. Pennsylvania Company et al, which is a very instructive case, Judge Taft says:

"Thus, in Walker vs. Cronin, 107 Mass. 555, the Supreme Judicial Court of that State sustained an action for damages by the plaintiff, who was a shoe manufacturer, against the defendant, for inducing plaintiff's employees to break their contract of service to his injury. In Lumley vs. Gye, 2 El. & Bl. 216, it was held that the plaintiff could recover damages from the defendant for procuring a third person, with whom the plaintiff had made a contract, to break the contract when such procuring was with the intention of injuring the plaintiff. The same principle was announced in Brown vs. Hall, 6 Q. B. Div. 333, 337, and has since been followed in other cases, and the doctrine has been applied, even where there was not a binding contract, but only the probability that one, though not binding would be performed."

Men trained in law, who know what law is, have given one voice upon the questions involved in this case, and it is herein stated.

In other words, improperly interfering between one and his employees with whom there is a binding contract for a definite period of time, is a violation of rights, and entitles the employer to an injunction, or an action in law for damages.

Now, if your Honor please, I want to say that you may search the law, but you cannot find any law to the contrary of what I have stated to-day. You may go to the State of Maine, or to the State of Texas. You may go to the North, West, South, or East—everywhere—men trained in law, who know what the law is, have given one voice as to what the law is upon the questions involved in this case.

Union men should know that they are being put outside of the pale of the law, subject to criminal prosecution, subject to damages for doing things which inure to the injury of their fellow-men.

I have not made this elaborate argument upon the proposition of law solely for your Honor's benefit. I had another and different motive. I desire as many of these gentlemen that belong to this union—many of them good and intelligent men—I want them to hear in open Court a statement of the law as it is. I want them to learn, if they did not know it already, that they were being put outside of the pale of the law, subject to criminal prosecution, if discovered in the acts which have been committed, subject to damages, and certainly subject to being restrained from doing these things which have inured and which are inuring to the

injury of their fellow men. I cannot and do not believe that they have been well informed or advised as to the actions that have been developed in the testimony, and as to their illegal character.

Personal reminiscence of a laborious student, working day and night, but did not "strike," and became one of the noted jurists of the country. Growth and devolopment of the most beautiful city of the West, but there are ominous signs of trouble threatening the arrest of its progress.

I came to this town fifty years ago — a boy, to begin the study of the law, and I studied it diligently. I worked day and night, and for years I worked many more hours than any laboring man in the City of Dayton. I have seen the village of Dayton grow from ten thousand people into the most beautiful city of the State, indeed the most beautiful city of the West, full of comfortable homes, lovely yards and gardens — peopled by intelligent and prosperous merchants, manufacturers, and mechanics. No more vice that necessarily attends so large a congregation of people, no squalid poverty, and no striking crime. The citizens are cheerful, contented, and happy. Along their homes are fine sidewalks, paved streets, and sanitary sewers; beautiful trees cast their welcome shade, and to a stranger it looks as if happiness, comfort, and pleasure were a part of the lot of every citizen in the town. It is a great manufacturing town in the very garden spot of the Miami Valley. Shall this continue? I see ominous signs of trouble threatening the arrest of our progress. One by one our factories are being forced to close, and our workingmen are being run into debt or driven from the town. Employers are contemplating the removal of their plant to other cities, and everybody knows that no new enterprise will be set on foot in the present conditions of labor troubles.

Metal Polishishers and Brass Molders Unions responsible for a calamity as far-reaching in extent as are the fondest hopes of the world's philanthropists and humantarians. The strike at the National Cash Register Company will arrest the solution of the problem of capital and labor.

We have recently had a most fearful exhibition of the ruin that a labor union may bring about. I refer to the National Cash Register Company. Here was a plant of which Dayton, the State, yes, the United States were justly proud, not merely for the excellency of its work and the immensity of its output, but for higher reasons. In this model factory, built up by the energy and sacrifices of two of our own young men, all that was possible to be done to make labor an honorable and pleasurable employment was done. No money was spared in the adornment of the ground, in the sanitary conditions, the surroundings of the employee, and the adoption of every reasonable scheme to elevate him in his own and his fellow man's estimation, reaching out even to the homes of the employees. A garden spot was made of all the territory surrounding the factory. Every facility was given for the advancement socially and morally of the employee and his family. A world-wide reputation was

achieved, and foreigners traveled thousands of miles to inspect the model factory of America, if not of the world. Here the great problem of capital and labor was being solved in triumph. Two thousand three hundred people, male and female, were receiving the highest wages and having all the comforts possible in a life of toil.

The Metal Polishers' Union has been nagging the proprietors of the National Cash Register Company until life is almost a burden. The calamity which has befallen the 2,300 employees of the N. C. R., the city of Dayton and the civilized world. This great crime was accomplished by a few leaders of these two organizations.

Upon this great scene suddenly a cloud arises; that cloud is the defendant in this case—the Metal Polishers' Union. This union had been nagging the proprietors until life was almost a burden. Every petty occasion was taken to show the owners that they were not the owners, that the union was bigger than they. Finally by the curtailment of work, it is said, it became necessary to reduce the polishing force, and four men were discharged, whereupon the factory was compelled to close by this defendant; and 2,300 people dependent upon their daily toil for their daily bread, were thrown out of work for an indefinite period. Is this what unionism means? This great crime, and a crime it is, was accomplished by your Ritters, Brigmans, and men of that stripe.

I say to the working men of Dayton, beware! Are you not tearing down the beautiful city that has been built here, destroying your own homes and those of your neighbors, and making of your own property a desolate waste?

A warning and an appeal to the Union men of Dayton.

Your Honor has a very great duty to perform. The future of the City of Dayton is in yours hands. It will be and continue to be, a prosperous and peaceable manufacturing town, tempting people to invest their money in new enterprises if it can be understood that men can pursue their labor in peace, and live in their homes without disturbance.

The law all-powerful and will prevail.

Dayton will continue to grow and become more beautiful. But the law must put its strong hand on this unruly defendant, to teach it and all organizations disposed to imitate its example, that the law is all powerful and will prevail.

And with this I submit the case, conscious that I have consumed more time than was necessary.

OPINION

OF THE

COURT.

THE DAYTON MANUFACTURING COMPANY,
PLAINTIFF,
VS.
THE METAL POLISHERS, BUFFERS, PLATERS AND BRASS WORKERS UNION NO. 5, OF DAYTON, OHIO, EDWARD J. LEO AND (240 OTHERS),
DEFENDANTS.

NO. 21173.

OPINION.

JUNE 1, 1901.

HON. ALVIN W. KUMLER, JUDGE.

This cause came on for hearing for a perpetual injunction.

Magnitude and character of plaintiff's business.

The petition in the case was filed on the 14th day of May, 1900, and alleges, in substance, that the plaintiff is a corporation, organized under the general laws of Ohio; that it is engaged in manufacturing car trimmings in brass and plated goods, locomotive headlights and other fabrics; that it has expended in buildings, machinery and tools two hundred and fifty thousand dollars, and has one hundred and fifty employes that work in said factory; that in carrying on said business it has a department in said factory known as the polishers and buffers department, in which it had constantly employed a number of metal polishers and buffers, and that it was necessary to have said department and men employed therein for the operation of its business; that nearly all of said defendants are members of said Union No. 5, which is a voluntary association, whose business and proceedings are carried on in secret; that on the 9th day of October, 1899, Louis Kissinger and

sixteen other defendants named in the petition were in the employ of plaintiff in the polishing and buffing department of said factory; that on said 9th day of October all of said seventeen defendants were discharged because the output of said department was not satisfactory to the general manager and other officers of the plaintiff; that since said 9th day of October the plaintiff has been compelled to have a large portion of the polishing and buffing required in its business done outside of its factory.

Defendants discharged because work was not satisfactory.

The petition charges specifically that between the 9th day of October, 1899, and the 12th day of February, 1900, and between the 8th day of March, 1900, and the 14th day of May, 1900, the said defendants, the Metal Polishers, Buffers, Platers and Brass Workers Union No. 5, of Dayton, Ohio, its officers, members, committees and representatives, and others associated and confederated with them, combined and conspired together to prevent plaintiff from having its necessary polishing and buffing done in the City of Dayton by others engaged in the same business, thereby compelling plaintiff to have said work done outside of the City of Dayton; that said conspiring defendants threatened the remaining employes in said department, and others who were subsequently employed and to be employed to take the places of those discharged, with force and violence, in order to compel said employes of the same trade to leave or not enter the service of plaintiff, and for the purpose of crippling plaintiff's business and compelling it to submit to all of the demands of said defendants; that said defendants have unlawfully and wrongfully combined and conspired together to prevent, by threats, intimidation, force and violence, certain persons from dealing with said plaintiff; that the employes of plaintiff have been accosted, abused and assaulted, while going to and from their homes, by said defendants because they refused to quit the service of plaintiff; that said defendants during all of said period, from early morning to late at night, have loitered around plaintiff's factory for the purpose of picketing the same, in order to ascertain who are employed by plaintiff, and to induce such employes, by means of threats and violence, to quit the employment of the plaintiff; that said conspiring defendants have, by means of threats and violence, induced and attempted to induce certain employes of plaintiff to break and violate their written and unexpired contracts with plaintiff; that said defendants have caused large crowds to assemble around and about plaintiff's factory in the day and night time, in order to intimidate plaintiff's employes and to annoy and embarrass plaintiff in the peaceable pursuit of its lawful business; that said crowds have been so boisterous and unruly that the police department has, on numerous occasions, been compelled to send its officers to plain-

Combination, conspiracy, threats, intimidation, force, violence, picketing, boycotting charged against defendants.

tiff's factory, in order to disperse the crowds and escort plaintiff's employes to their homes after working hours.

This is a brief summary of the petition, which is quite lengthy, consisting of twenty-seven pages of typewritten matter, and replete with charges of conspiracy, threats, violence, intimidation, unlawful picketing, boycotting, etc., on the part of defendants and their associates and confederates, to prevent plaintiff from employing whom it pleases and of conducting its own business in a manner suitable to itself.

Prior injunction suit dismissed in consideration of certain promises made by defendants.

The petition also avers that the injunction suit of February 12, 1900, was dismissed on March 8, 1900, in consideration of the promises on the part of defendants, that they would not interfere with the business or employes of the plaintiff working in said manufacturing establishment.

The petition further avers that plaintiff has no adequate remedy at law and that it has suffered and will continue to suffer great and irreparable injury, and prays for a perpetual injunction.

Defendants' answer.

The defendants have filed two answers to the petition which are substantially the same. They admit that plaintiff is a corporation duly incorporated and organized under the laws of the State of Ohio; admit that it has a capital stock as averred in the petition and that it is carrying on a manufacturing business in the City of Dayton; admit that the Metal Polishers, Buffers, Platers and Brass Workers Union No. 5, of Dayton, Ohio, is an unincorporated association; admit that on the 9th day of October, 1899, and for a long time thereafter, Edward J. Leo, and about two hundred more of the defendants, were members of the Metal Polishers, Buffers, Platers and Brass Workers Union No. 5, of Dayton, Ohio, and aver that the remaining defendants are not members of said Union No. 5, and admit that Louis Kissinger, together with the other persons named in plaintiff's petition, were in the employ of plaintiff as in said petition alleged, in the polishing and buffing department, and that they were discharged by said plaintiff from said employment; admit that plaintiff filed its bill in equity in this court against the Metal Polishers, Buffers, Platers and Brass Workers Union No. 5, of Dayton, Ohio, and other defendants therein named, on the 12th day of February, 1900, and admit that said case was disposed of in said court according to the entry of said court set out in plaintiff's petition; admit that Jerry Hawkins was arrested and fined in the Police Court of the City of Dayton, Ohio, for carrying concealed weapons; admit that certain notices were served upon certain officials of the City of Dayton, as set out in plaintiff's petition; admit that certain notices appeared in the newspapers of the City of Dayton, Ohio, as set out in plaintiff's petition, but deny that they

or either of them caused said articles to appear in said newspapers, or had any prior knowledge of the same; said defendants deny that they or any number of them at any time appeared in or around plaintiff's premises in an unlawful manner or for an unlawful purpose, or for the purpose of interfering in an unlawful manner with the plaintiff in the prosecution of its business, or of intimidating its employes, or in any manner or form interfering with the said plaintiff in the prosecution of its business.

Said defendants deny all acts of conspiracy charged against them in plaintiff's petition, and deny each and every allegation of plaintiff's petition not specifically admitted.

The petition and answers make up the issues of fact upon which this case is to be finally settled and determined in so far as this court is concerned.

Protracted hearing. Long and able arguments.

The hearing of the case lasted fourteen days, and was argued at length with great ability, and we have determined to state our conclusions of fact separately from our conclusions of law. The answers filed by the defendants greatly simplify the finding of facts.

FINDING OF FACTS.

Union an unincorporated secret organization.

1st. That the defendant Union No. 5, is an unincorporated secret association known as a labor union or labor organization, and that the object of the union as expressed in its constitution and ritual is as follows:

"ARTICLE II.

Stated objects of the Union.

SECTION 1. The object of this organization shall be to encourage all persons working at our craft to become union men; try and procure employment for the unemployed; to maintain a fair and equitable rate of wages; to uphold our rights as citizens, and try to settle our grievances by arbitration."

PLEDGE.

That in order to become a member of said Union No. 5, each applicant is required to take the following obligation:

Obligation required of members of the Union.

"I, ——— ———, do hereby solemnly promise on my honor as a man that I will not reveal to any person or persons any business or proceedings of any meeting of this Local, unless by order of this Local, to any but those I know to be members in good standing; and I further promise to the best of my ability to abide by the by-laws, constitution and prices of this organization, and I will at all times abide by the decisions of the legal majority; I will use all honorable means to procure employment for the members of this organization in preference to others; I will not wrong a brother or see him wronged if in my power to prevent.

"I do further promise to assist a member of this organization when and wherever I may find him in distress."

The applicant is then addressed by the president as follows:

"You are now a member of this organization, and I give you my right hand in full acknowledgement thereof."

Thereupon the applicant becomes a full fledged member of the union.

Defendants were discharged. No lockout or strike.

2d. That on the 9th day of October, 1899, Louis Kissinger and sixteen other defendants named in the petition, were in the employ of plaintiff in its polishing and buffing department, all of whom were members of Union No. 5, nine of whom joined said union between September 20th and October 4th, 1899; that on said 9th day of October, 1899, the plaintiff discharged Louis Kissinger and said sixteen other defendants; that they were discharged is admitted in defendants' answer and by William Orr, one of said discharged defendants, in his report to the union on the evening of October 9th; none of these discharged defendants were working under contract with plaintiff, but were employed from day to day.

3d. Before said defendants were discharged, William Orr, one of the defendants above named, demanded the discharge of a fellow workman whom Orr called Dummy, employed in the polishing department and a non-union man. This the foreman refused to do. Thereupon Orr said to Mr. Stewart, the foreman of the department:

The workmen were "sworn to stick together."

"I might as well be candid with you, every man here in this room is sworn to stick together, and I have been put here as spokesman. It ain't a very pleasant position to be in for I will be blamed for it all, but somebody has to do it and we don't want any trouble, but we can't work with that man."

Union orders the factory premises picketed. Order in force for four months.

On the evening of October 9th the said Orr reported the discharge of the men in the polishing department to Union No. 5. Thereupon said union appointed a lockout committee from its members for the purpose of picketing the shop of plaintiff, and to prevent all the discharged men from returning to work in the polishing and buffing department, and to prevent all persons of the same trade from entering the service of plaintiff, and for the further purpose of inducing all persons who might enter said service in said department, to leave said service unless they became members of the union. The picketing as ordered by the union began on the morning of October 10th, 1899, at and around plaintiff's factory, and continued almost constantly from that time until the 12th day of February, 1900, when the first temporary restraining order was issued by this Court.

Temporary restraining order dissolved by consent of parties in interest.

On the 8th day of March, 1900, the case came on for hearing on motion to dissolve the temporary restraining order of February 12th, but said case was settled and dismissed, as appears from the following entry:

"This day came on the above case for hearing upon the motion to dissolve the temporary restraining order as prayed for in the petition

Thereupon came the defendants and by their counsel, not admitting that they, or any of them, have committed any of the matters charged against them in the petition, stated in open court that they and each of them had and now have no intention of committing any of the acts charged in the petition, or of interfering with the business or employes of the plaintiff in the manner charged in the petition, and will not do so, in consideration of which statement this case is dismissed without prejudice to a future action. Costs paid."

Picketing, boisterous and riotous conduct requiring police interference, ensued.

Soon thereafter, the defendants resumed the picketing around and about plaintiff's factory, and continued to so do until the 14th day of May, 1900, when this suit was brought and the temporary injunction allowed. During said period the picketing varied in character, at times there were only a few of the defendants around plaintiff's factory and they were peaceable and quiet; at other times large crowds assembled there and conducted themselves in a boisterous and riotous manner to such an extent that the Police Department was called upon to send policemen to the factory to disperse the crowds, and upon one occasion sixteen policemen were required to dispel the unruly crowds, and at another time it became necessary for Sergeant McBride to read the Riot Act and to order two or three patrol-wagon loads to be taken to the station house. The pickets and other persons congregated at and around the factory during the week prior to May the 14th were especially noisy and abusive in their language and deportment.

Employes followed to their homes, abused, threatened, assaulted, residences stoned, arrested for carrying concealed weapons.

We further find that upon various occasions the employes working in the polishing and buffing department after October 9, 1899, were followed to their homes, abused, threatened and assaulted on the streets and in the street cars, and in one instance a workman by the name of Hayes was assaulted on his way home from the factory and on the same evening his house was stoned; and in another instance a workman by the name of Johnson was assaulted on a street car and so badly injured that he was confined to his bed under the care of a physician for the period of one week; again it occurred, that two employes, Brown and Kendall, were assaulted and injured in front of the Garfield Club rooms. At different times a workman by the name of Jerry Hawkins was abused and assaulted on the street and in a saloon. He was upon several occasions surrounded by threatening crowds, so that it became necessary for Mr. Kirby, the general manager of plaintiff, or someone else, to escort him to his home, in order to prevent violence from being inflicted upon him. He was a special policeman, regularly appointed by the police department to protect the property and employes of plaintiff's factory. Notwithstanding that fact, he was arrested, prosecuted and found guilty in the Police Court of carrying concealed weapons and fined. His case is now pending on error in the Common Pleas Court.

Several of the employes, notably, Eberle, Petty, Freed, Munch, Brown, Meeker, Furry, Kendall, Brownlee, Hayes and Hawkins, were either followed or threatened or assaulted, in order to induce them to break their contracts with plaintiff or leave the employ of plaintiff.

Action of Union compelled plaintiff to attempt to have its work done elsewhere.

4th. We find that after October 9, 1899, the plaintiff could not employ persons sufficient to do the necessary work in its polishing department, and that it attempted to have its work done in the City of Dayton, outside of its shop, by Bates Bros., The Pasteur-Chamberland Filter Co., and Jordan Bros., and that these establishments were visited by a committee of Union No. 5 and notified that they could not do the work of The Dayton Manufacturing Company; that they could complete unfinished work already on hand, and when that was done, they should take no more work for the plaintiff. This protest, however, was subsequently withdrawn by the committee and these establishments were permitted to do the work of The Dayton Manufacturing Company, provided the work was done by union men. Plaintiff, however, did ship its machinery and equipments to Hamilton, Ohio, and there established a polishing and buffing department, in order to have its necessary work done, under the supervision of Theodore Barlow, one of the plaintiff's employes; and did ship some of its unfinished materials to Cincinnati for completion; all of which was done at a great loss of time and expense to plaintiff.

Unlawful acts of Union compel plaintiff to close polishing department and board and lodge other employes.

5th. We find further, that on the 28th day of March, 1900, the plaintiff was compelled to shut down its polishing department and to keep it closed until the 6th day of April following, and that during said period it arranged for the boarding and lodging of its employes in said department on the third story of its factory, where all of such employes where boarded and lodged for several months.

Union paid strike pay.

6th. We find that Union No. 5, during said period, paid out large sums of money to the members that were discharged by plaintiff, for strike pay and committee work.

CONCLUSIONS OF LAW.

Law applied to the facts.

It now becomes our duty to apply the law as we find it, to the facts in the case. While the authorities cited by counsel are comparatively modern, the legal rights of both employer and employe have been so well and clearly defined by the American and English decisions that the question has become a well-beaten path, and to add anything more or do anything else other than cite these authorities would seem to be a work of supererogation.

In order to determine the questions arising in this case, correctly and intelligently, we must go back to the organic law of the land. The Constitution is the irremovable guide-post, which fixes and limits the boundaries of our personal, political, property and religious rights. It is the supreme law of the land, "beyond the reach of all legislative control, whether by authorized or unauthorized bodies;" to it we must all bow our heads in subjection.

The Constitution an irremovable guide-post, limiting the boundaries of personal, political, property and religious rights.

Art. I, Sec. 1, of the Bill of Rights provides that—

"All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and seeking and obtaining happiness and safety."

Provisions of the Bill of Rights.

Art. I, Sec. 16, of same provides that—

"All courts shall be open, and every person, for an injury done him in his land, goods, person or reputation, shall have remedy by due course of law; and justice administered without denial or delay."

Our Supreme Court say, in passing on the constitutionality of the amended mechanic's lien statute, that—

Decision of Supreme Court.

"The inalienable right of enjoying liberty and acquiring property, guaranteed by the first section of the bill of rights of the Constitution, embraces the right to be free in the enjoyment of our faculties, subject only to such restraints as are necessary for the common welfare."

Palmer & Crawford v. Tingle, Syl. 1, 55 O. S., 423.

"Liberty and the common welfare demand that all, rich and poor alike, should have an equal chance and to be treated alike, and laws should be enacted for their equal protection and benefit.

"With liberty and the equal protection of the laws, the weak and poor of today become the rich and influential of the future. And it is a narrow, unworthy and unpatriotic policy to attempt to drive the poor and weak out of business for the benefit of the rich and influential. One of the principal virtues of the statute claimed by its friends is that it has driven all the poor and weak contractors out of business This result, instead of being commended, is to be deplored."

"The liberty of making contracts is absolutely essential to the acquisition, possession and protection of property."

25 Am. S. R., 873.

"The doctrine is generally recognized and enforced that every person living under the protection of the general government has the right to follow such occupation or industrial pursuit as to him seems fit, provided it is not injurious to the morals, health, safety or welfare of the public; and such persons generally are entitled to the equal protection of the laws in respect to person and property; and, as incident thereto, the right to employ labor, make contracts in regard thereto upon such terms as may be agreed upon by the parties, and to enforce such contracts when made. Ex parte Kuback, 85 Cal. 274 (and others). And the same is true of private corporations, with respect to the business they are chartered to engage in."

The Wheeling Bridge and Terminal Ry. Co. v. Gilmore, 8 C. C. R. p. 665.

THE REMEDY—SO-CALLED GOVERNMENT BY INJUNCTION.

Injunction is the law's remedy in such cases.

That injunction is the appropriate remedy to meet a case like this is too well settled to admit of intelligent argument; that injunction will lie, although the acts complained of will render the party or parties amenable to a criminal prosecution or make them liable in a civil action for damages, is clear. If there ever was anything in the so-called doctrine of "government by injunction," it was killed beyond resurrection by the Supreme Court of the United States. The opinion was written by Mr. Justice Brewer, all other judges concurring, five Republicans and four Democrats.

In Re Debs, 158 U. S. p. 564.

BOYCOTTING.

Boycotting unlawful in the United States and England.

That boycotting is illegal and has no standing in this country or England, is well settled by a long line of decisions. "The word 'boycott', in itself, implies a threat."

Brace v. Evans, 3 Ry. and Corp. Law, J. 561

On this subject we will first call your attention to a Michigan case. In that case, Jacob Beck & Sons filed a bill in equity against the Railway Teamsters Protective Union, the Detroit Council of Trades and Labor Unions, George Innis and others, to enjoin the boycotting of complainants' business. The appeal was by complainants from a decree enjoining merely the use of violence or threats of violence. The first four syllabi are as follows:

Law will protect employers in their right to employ and discharge whom they please, and to contract with employes as to time of service and rate of compensation.

Legal rights of emyloyes fully defined.

"1. The law will protect employers against the unlawful interference of trades unions in their right to employ whom they please, at such prices as they and the persons employed can agree upon, and to discharge them at the expiration of their terms of service or for violation of their contracts.

"2. Organization into unions by workingmen for the securing of better and uniform wages, and the use of persuasion to induce other workingmen to join the union, and to refuse to work except for the established wage, and the presentation of their cause to the public in newspapers or circulars, in a peaceable way and with no attempt at coercion, are lawful.

"3. But the boycotting of one who refuses to accede to the demands of the union is unlawful, where the means used to prevent persons from dealing with the person boycotted are threatening in their nature, and tend naturally to overcome, by fear of loss of property, the will of others, and compel them to do what they would not otherwise do, though unaccompanied by actual violence or threats of violence.

"4. Injunction will lie to restrain a combination of persons from attempting to ruin complainant's business by bringing to bear upon his customers and employes intimidating and coercive means."

Beck v. Railway Teamsters' Protective Union, 118 Mich. 497

"The word 'boycott' is usually understood as a combination of many to cause a loss to one person by coercing others against their will, to withhold from him their beneficial business intercourse, through threats that, unless those others do so, the many will cause similar loss to them.

Boycotting unlawful, though unaccompanied by violence or threats of violence.

"Undoubtedly, this is the common understanding of its meaning.

"The law sanctions only peaceful means, which leave every one to the exercise of his own free will. The boycott, condemned by the law, is not alone that accompanied by violence and threat of violence, but that where the means used are threatening in their nature, and intended and naturally tend to overcome, by fear of loss of property, the will of others, and compel them to do things which they would not otherwise do."

Combination for the purpose of attempting to injure another's business by intimidating or coercive means, is unlawful.

Erle, C. J., speaking of the laborer's rights, says:

"Every person has a right under the law, as between himself and his fellow subjects, to full freedom in disposing of his own labor or his own capital, according to his own will. It follows that every other person is subject to the correlative duty arising therefrom, and is prohibited from any obstruction to the fullest exercise of this right which can be made compatible with the exercise of similar rights by others."

Erle, Trades Unions, 12;
Allen v. Flood, 23 App. Cas. 1, 75, 118 Mich. 525–526.
Toledo R. R. Co. v. Penna. Co. 54 Fed. 730.

"The defendants have not appealed from the decree against them. No attempt is made by their counsel to defend or justify their action, or to deny the many acts of intimidation, threats, and almost violence; and the learned Circuit Judge in his opinion said:

"'I am satisfied these things have been done, and that defendants have combined together for this purpose. I do not intend to justify the publication.'

"Their counsel frankly concede that 'it was unlawful for defendants to enter upon the premises of the complainants, or to gather in groups in front of complainants' premises, or to use any force or violence for the accomplishment of their purpose.' In other words, they concede that defendants were engaged in an 'unlawful conspiracy,' as defined by Shaw, C. J., in Com. v. Hunt, 4 Metc. (Mass.) 111, 121 (38 Am. Dec. 346), a definition approved by the Supreme Court of the United States in Callum v. Wilson, 127 U. S. 540, 555, viz.:

Unlawful for defendants to enter upon the premises or gather in groups in the street in front of complainants' premises.

"The general rule of the common law is that it is a criminal and indictable offense for two or more to confederate and combine together, by concerted means, to do that which is unlawful or criminal, to the injury of the public, or portions or classes of the community, or even to the rights of an individual.

"The decree sanctioned the distribution of the boycott circulars to customers and the public generally, except in front of the mill premises, and any form of boycott, either to complainants or to their customers, without the actual use of violence, and sanctioned threats to injure, affect, and ruin complainants' business, when unaccompanied by violence or threat of violence. From this part of the decree complainants have appealed.

Courts of Equity have jurisdiction to restrain conspiracy. Suits at law would be inadequate and a multiplicity would arise.

"It is conceded that courts of equity have jurisdiction to restrain conspiracies of this character when irreparable injury is sure to follow. Suits at law would be inadequate, and a multiplicity of suits at law would arise. Complainants were engaged in a lawful business, and carrying it on in a lawful manner. They had done nothing to the defendants, or any of

them, either illegal, immoral, or unjust. They were paying wages to their teamsters in fact greater than the union teamsters received, because they made no deductions for certain lost time which the union employers made. The law protects them in the right to employ whom they please, at prices they and their employes can agree upon, and to discharge them at the expiration of their term of service or for violation of their contracts. This right must be maintained, or personal liberty is a sham. So, also, the laborers have the right to fix a price upon their labor, and to refuse to work unless that price is obtained. Singly, or in combination, they have this right. They may organize in order to improve their condition and secure better wages. They may use persuasion to induce men to join their organization, or to refuse to work except for an established wage. They may present their cause to the public in newspapers or circulars, in a peaceable way, and with no attempt at coercion. If the effect in such case is ruin to the employer, it is damnum absque injuria, for they have only exercised their legal rights. The law does not permit either party to use force, violence, threats of force or violence, intimidation, or coercion. The right to trade and the personal liberty of the employer alone are not involved in this case; the right ot the laborer to sell his labor when, to whom, and for what price he chooses is involved."

Same case, 118 Mich. 515, 516 and 517.

"The decree must be modified so as to enjoin picketing, the distribution of the boycotting circular, and all acts of intimidation and coercion."

Same case, 118 Mich. 529.

We next come to the case of State vs. Stewart, 59 Vt. 273, which was a prosecution under an indictment for a conspiracy, to hinder and prevent the Ryegate Granite Works from employing certain granite cutters and for hindering and deterring certain laborers from working for said corporation. On page 239 the learned judge says:

"The principle upon which the cases, English and American, proceed, is, that every man has the right to employ his talents, industry, and capital as he pleases, free from the dictation of others; and if two or more persons combine to coerce his choice in this behalf, it is a criminal conspiracy. The labor and skill of the workman, be it of high or low degree, the plant of the manufacturer, the equipment of the farmer, the investments of commerce, are all in equal sense property. If men by overt acts of violence destroy either, they are guilty of crime. The anathemas of a secret organization of men combined for the purpose of controlling the industry of others by a species of intimidation that works upon the mind rather than the body, are quite as dangerous, and generally altogether more effective, than acts of actual violence. And while such conspiracies may give to the individual directly affected by them a private right of action for damages, they at the same time lay a basis for an indictment on the ground that the State itself is directly concerned in the promotion of all legitimate industries and the development of all its resources, and owes the duty of protection to its citizens engaged in the exercise of their callings. The good order, peace, and general prosperity of the State are directly involved in the question."

Every man has the right to employ his talents, industry and capital as he pleases, free from the dictation of others; and if two or more persons combine to coerce his choice in this behalf, it is a criminal conspiracy.

Also, on page 290:

"The exposure of a legitimate business to the control of an association that can order away its employes and frighten away others that it may seek to employ, and thus be compelled to cease the further prosecution of its work, is a condition of things utterly at war with every principle of justice, and with every safeguard of protection that citizens under our system of government are entitled to enjoy. The direct tendency of such intimidation is to establish over labor and over all industries, a control that is unknown to the law, and that is exerted by a secret association of conspirators, that is actuated solely by personal considerations, and whose plans, carried into execution, usually result in violence and the destruction of property.

Certain phases of unionism are at war with every principle of justice and every safeguard of protection that citizens under our system of government are entitled to enjoy.

"That evils exist in the relations of capital and labor, and that workmen have grievances that oftentimes call for relief, are facts that observing men cannot deny. With such questions we, as a court, have no function to discharge further than to say that the remedy cannot be found in the boycott."

Another interesting case will be found in 77 Maryland. This was an action brought by the appellant to recover damages for the wrongful and malicious interference of the appellee, by which he was discharged from his employment in a New York clothing house, and prevented from the free exercise of his trade and occupation, and thereby deprived of his means and livelihood. In the syllabus, which is the law of the case, the court say:

"Where an employe, a non-union man, who is performing the duties of his position to the entire satisfaction of his employers, who would gladly have retained him in their service, is discharged in consequence of a threat from a labor organization that in case he is any longer retained it will be compelled to notify all labor organizations of the city that the business house of the employers is a non-union one, and thus subject them to great loss, such interference by the labor organization is wrongful, and an action will lie against it by the non-union employe for the damages he has sustained in consequence of such discharge."

An employee, a non-union man, discharged in consequence of a threat to boycot employer, has cause of action against the union for damages he has sustained in consequence of being discharged.

In the opinion the court say:

"In this case, we think the interference of the appellee was in law malicious and unquestionably wrongful. The appellant was a man of family, a good workman, engaged in a lawful pursuit, performing his duties in an entirely satisfactory manner, without objection in any respect, and willing and desirous of becoming a member of the appellee if an opportunity had been offered him. He was not able to obtain membership with the appellee, nor was he permitted to continue his work with his employers, who would gladly have retained him in their service, if they could have done so without loss or embarrassment to themselves.

"The provisions of law authorizing the creation of the appellee corporation provides for the formation of trade union 'to promote the well-being of their every day life, and for mutual assistance in securing the most favorable conditions for the labor of their members and as beneficial societies.' Code, Art. 23, Sec. 37.

"But when the State granted its generous sanction to the formation of corporations of the character of the appellee, it certainly did not mean that such promotion was to be secured by making war upon the non-union laboring man, or by any illegal interference with his rights and privileges. The powers with which this class of corporations are clothed are of a pe-

Labor, in its organized form, should not become an instrument of

wrong and injustice to those who are striving to maintain themselves and families.

culiar character, and should be used with prudence, moderation and wisdom, so that labor in its organized form shall not become an instrument of wrong and injustice to those who, in the same avenue of life, and sometimes under less favored circumstances, are striving to provide the means by which they can maintain themselves and their families. It is essential to good government and the peace of society that correct legal principles be applied in the consideration of all questions; for it is undeniably true that wrong principles cannot and never do produce salutary remedies.

"Courts are bound to look at things just as they are, to pass on facts just as they are developed, to treat the conduct of men just as it is, and to impute to them that intention which their acts and their conduct disclose was their intention. United States vs. Kan. 23 Federal Reporter, 750."

No. 7507, K. of L. of Baltimore City, 77 Maryland, pages 396, 405, 406 and 407.

Lucke vs. Clothing Cutters & Trimmers' Assembly.

Conclusive evidence that boycotting is unlawful in every sense.

These three cases ought to be sufficient to satisfy the mind of any reasonable man that boycotting is illegal in every sense. These cases are each of a different character; one is a bill in equity to restrain boycotting, one a criminal prosecution for entering into a criminal conspiracy, and the other an action for damages, for a wrongful and malicious interference, where plaintiff was discharged from his employment,—all of these cases were against labor organizations or their members. If any person desires to pursue this subject further, I will call his attention to the following additional authorities:

55 Conn., 46.
53 N. J. Eq., 101.
23 Law Bulletin, 48; and cases cited.

PICKETING.

Picketing is unlawful and may be enjoined.

The modern authorities are to the effect that picketing in front and about complainant's factory, whether in the streets or adjacent property, is unlawful and may be enjoined.

Distribution of boycott circulars may be enjoined.

"The picketing of the premises of a person boycotted, for the purpose of intercepting his customers and employes, and the distribution of 'boycott circulars,' containing statements wholly false as to his relations with his employes, pursuant to an avowed intention of ruining his business, though carried out without violence, are, in themselves, acts of coercion which may be enjoined.

"To picket complainants' premises in order to intercept their teamsters or persons going there to trade is unlawful. It itself is an act of intimidation, and an unwarranted interference with the right of free trade. The highways and public streets must be free to all for the purposes of trade, commerce, and labor. The law protects the buyer, the seller, the merchant, the manufacturer, and the laborer in the right to walk the streets unmolested. It is no respecter of persons; and it makes no difference, in effect, whether the picketing is done ten or one thousand feet away.

Intercepting teamsters or persons going to complain-

"It will not do to say that these pickets are thrown out for the purpose of peaceable argument and persuasion They are intended to intimidate and coerce. As applied to cases of this character, the lexicographers thus define the word 'picket': 'A body of men belonging to a trades union

ent to watch and annoy men working in a shop not belonging to the union, or against which a strike is in progress.' Cent. Dict.; Webs. Dict. The word originally had no such meaning. This definition is the result of what has been done under it, and the common application that has been made of it. This is the definition the defendants put upon it in the present case. Possibly the decree is specific enough to include picketing, but we deem it our duty to place it beyond controversy."

ant's premises, for any purpose, is unwarranted interference with the rights of free trade.

Beck v. Teamsters' Protective Union, 118 Mich. 520 and 521.

Pickets are not thrown out for peaceable argument or persuasion. They are intended to intimidate and coerce.

In the case of American Steel & Wire Co. v. Wire Drawers and Die Makers' Unions Nos. 1 and 3 et al, 90 Fed. R. 608, the syllabi are as follows:

"1. The owner of a house, whether a dwelling, store, or mill, has a distinct right of property in the streets and highways adjacent and used as approaches to it; and a use of such streets or highways by others for the purpose of forcibly preventing access to such house is an unlawful interference with such right, and constitutes a private nuisance, which may be abated by injunction.

"2. A claim that a corporation is a trust, and illegal, cannot be made collaterally as a defense to a suit by the corporation to enforce a private right by injunction.

A claim that a corporation is a trust, and therefore illegal, is not a defense in suit for injunction.

"3. Defendants, who had formerly been employes of plaintiff, in its mills, as wire drawers, but who had gone out on a strike, for more than two months had patrolled the streets adjacent to plaintiffs' works both day and night, keeping within call at all times a large body of men, for the claimed purpose of dissuading other workmen from taking employment in their places. The evidence showed but a single instance during that time in which defendants stood aside and permitted a wire drawer to enter the mill, and that instance was disputed, although in a number of instances workmen attempted unsuccessfully to enter, and several conflicts occurred between them and the strikers. Held, that such action was an unlawful interference by defendants with plaintiff's rights of property and freedom to contract, which entitled plaintiff to relief by injunction.

Picketing for the purpose of dissuading other workmen from taking employment, is unlawful.

"4. It is not necessary that actual batteries or assaults shall be committed, to constitute unlawful force or violence which will afford ground for relief by injunction; but a display of force sufficient to deter others from attempting to exercise a lawful right, and intended to accomplish that purpose, is sufficient.

Actual batteries and assaults not necessary to constitute unlawful force or violence.

NOTE—"1. In the case of Lyons v. Wilkins, the English Court of Appeal rendered, on December 20, 1898, a decision which is directly in line with the decision of Judge Hammond. It was held that an injunction would be granted to restrain persons from watching or besetting the works or place of business of an employer, or person working for him, for the purpose of persuading or otherwise preventing persons from working for him, or for any other purpose, except merely to obtain or communicate information.—[ED."

INDUCING OTHERS TO BREAK THEIR CONTRACTS.

Our courts have held that it is unlawful for one person to induce another to break his contract with his employer; thus as was said by the court in the case of R. R. Co. vs. McConnell, 82 Fed. Rep. 65, 8 and 9 syllabi:

Unlawful for a person to induce another to break his contract with his employer.

"One who wrongfully interferes in a contract between others, and, for the purpose of gain to himself, induces one of the parties to break it, is liable to the party injured thereby; and his continued interference may be ground for an injunction, where the injury resulting will be irreparable.

"Where it is clearly shown that a complainant's rights are being violated, and that injury results, and the only remedy at law is by a large number of suits for damages, which, by reason of their number and cost, will produce no substantial results, the injury is irreparable, and affords ground for injunction."

We also find in the case of Shoe Co. vs. Saxey, 131 Mo. p. 212, that,—

Unlawful to force employes to quit work and join a strike.

"A court of equity may interfere by injunction to prevent persons from attempting by intimidation, threats of violence, and other unlawful means, to force employes to quit work and join a 'strike'.

"The injunction in this case does not hinder the defendants doing anything that they claim they have a right to do. They are free men, and have a right to quit the employ of plaintiffs whenever they see fit to do so, and no one can prevent them; and whether their act of quitting is wise or unwise, just or unjust, it is nobody's business but their own. And they have a right to use fair persuasion to induce others to join them in their quitting. But when fair persuasion is exhausted they have no right to resort to force or threats of violence. The law will protect their freedom and their rights, but it will not permit them to destroy the freedom and rights of others. The same law which guarantees the defendants in their rights to quit the employment of plaintiffs at their own will and pleasure also guarantees the other employes the right to remain at their will and pleasure.

"These defendants are their own masters, but they are not the masters of the other employes, and not only are they not the masters of the other employes, but they are not even their guardians.

Any one may exercise his own right as he pleases, provided he does not thereby prevent another exercising his right as he pleases.

"There is a maxim of our law to the effect that one may exercise his own right as he pleases, provided that he does not thereby prevent another exercising his right as he pleases. This maxim, or rule of law, comes nearer than any other rule in our law to the golden rule of divine authority: 'That which you would have another do unto you, do you even so unto them.' Whilst the strict enforcement of the golden rule is beyond the mandate of a human tribunal, yet courts of equity, by injunction, do restrain men, who are so disposed, from so exercising their own rights as to destroy the rights of others."

Same case, p. 222-223.

And we find Justice Harlan saying in Arthur vs. Oakes, 63 Fed. Rep., that—

A conspiracy is illegal although nothing be actually done in execution of such conspiracy.

"Syllabus 7. According to the principles of the common law, a conspiracy upon the part of two or more persons, with the intent, by their combined power, to wrong others or to prejudice the rights of the public, is in itself illegal, although nothing be actually done in execution of such conspiracy. This is fundamental in our jurisprudence. So, a combination or conspiracy to procure an employe or body of employes to quit service in violation of the contract of service, would be unlawful, and in a proper case might be enjoined, if the injury threatened would be irremediable at law."

63 Fed Rep., page 311.

APPLICATION OF THE LAW TO THE FACTS.

Defendants did unlawfully combine and conspire for the purpose of boycotting and crippling plaintiff's business and enforcing reinstatement of discharged men.

Applying the law as we find it from the authorities cited, to the facts in this case, we are irresistibly driven to the conclusion that prior to the 9th day of October, 1899, William Orr, one of the defendants herein, undertook to unionize the polishing and buffing department of plaintiff's factory, and that after the seventeen defendants were discharged, the defendants, The Metal Polishers, Buffers, Platers and Brass Workers Union No. 5, of Dayton, Ohio, its officers, members, walking delegates, committees and representatives, together with certain unknown persons, did unlawfully combine and conspire together for the purpose of boycotting and crippling plaintiff's business, and picketing plaintiff's place of business, in order to compel plaintiff to reinstate the discharged men, and in order to compel plaintiff to employ only such persons as were satisfactory to the Union, and for the further purpose of compelling plaintiff to discharge all persons objectionable to the Union, who were in plaintiff's service after October 9, 1899.

Men pledged to secrecy, and to stand by the majority, an obstacle to procurement of positive testimony in case.

When we take into consideration that the defendant Union is a secret organization, whose members are pledged to secrecy and who agree to stand by the legal majority, one can readily understand how difficult it was to arrive at a satisfactory conclusion of the facts in the case by positive testimony. By the very necessities of the case, made so by the defendants themselves, we had to rely largely on circumstantial evidence. Circumstantial evidence, however, to a court or jury is frequently more convincing than positive testimony. The members of the Union having agreed among themselves to divulge none of its proceedings and to stand by the legal majority in all matters, are presumed to have full knowledge of all that was going on. It will not do for the non-participating members to say that they should not be held responsible because they did not personally engage in the boycott or picketing or the threats and violence. When a conspiracy is once formed among a number of individuals, the act of one is the act of all. It is equally true that the act of the legal majority of the Union is the act of each of its members.

Act of a legal majority of union is the act of each of its members.

If constitution and by-laws of union were obeyed we would never hear of any trouble between employer and employe. If we obey the law we will be a

If the defendants would live within the objects and purposes of their organization as expressed in their constitution and by-laws, all would be well and we would never hear of any trouble between the employer and employes. But when the members of the Union go beyond their conceded right to peacefully persuade or arbitrate, and resort to threats, intimidation and violence to accomplish their ends, they must expect to face the courts, which always have and always will condemn such conduct. If we are

happy and prosperous people. If we turn our backs on the Declaration of Independence and fail to obey the Constitution, our republican form of government will be wrecked in a storm of anarchy.

obedient to the law, we will continue to be a happy, contented and prosperous people, but if we turn our backs to the principles of the Declaration of Independence and fail to obey the laws and uphold the Constitution, our republican form of government, which was framed by the wisest men whose names appear in the book of time, will be wrecked in a storm of anarchy.

The motion to dismiss non-participating defendants herein who are not members of the Union will be sustained. The motion to dismiss non-participating members of the Union will be overruled.

Decree in favor of plaintiff for a perpetual injunction.

A decree, therefore, may be taken in this case in favor of the plaintiff for a perpetual injunction, as prayed for in the petition. Counsel, in preparing the entry, can use the form in the Debs case, 158 United States, p. 564, in so far as it is applicable in this case.

ENTRY.

THE DAYTON MANUFACTURING CO.,
Plaintiff.

VS.

THE METAL POLISHERS, BUFFERS, PLATERS AND BRASS WORKERS UNION NO. 5, et al.,
Defendants.

This day this cause came on for hearing on the pleadings and evidence; on consideration whereof, the Court finds that the allegations of the petition are true as to the defendants, The Metal Polishers, Buffers, Platers and Brass Workers Union No 5, its officers and members, (named in the entry) and that the plaintiff is entitled to the relief prayed for to the extent hereinafter adjudged.

Wherefore the defendants, The Metal Polishers, Buffers, Platers and Brass Workers Union No. 5, its officers and members, (named in the entry), and all persons combining and conspiring with them, their associates and confederates, and all other persons whomsoever, known or unknown, are hereby perpetually enjoined and commanded absolutely to desist and refrain from in any way or manner interfering with the employees or officers of the plaintiff now in its employ, and from in any manner interfering with any person who may desire to enter the employ of the plaintiff, by the way of threats, intimidations, personal violence or other means calculated or intended to prevent such persons from entering or continuing in the employment of the plaintiff, or calculated or intended to induce any such person or persons to leave the employment of the plaintiff; from boycotting plaintiff, either by threats, intimidation, persuasion, or otherwise; from interfering, intimidating, boycotting, molesting, or threatening in any manner any person or persons with the purpose or intent of inducing such person or persons not to deal with, or do business with, the plaintiff; from congregating or loitering about or in the neighborhood of the premises of the plaintiff, or at any other places, with intent to interfere with the employees of plaintiff, or to interfere with the prosecution of plaintiff's business, or to interfere with or to obstruct in any manner the business or trade of plaintiff, or to prevent or induce the public not to trade with, or deal with, the plaintiff; from picketing or patrolling the factory or other premises of the plaintiff, or the homes and stopping places of its

Defendants perpetually enjoined from interfering with the employees.

From boycotting.

From congregating or loitering about the premises.

From picketing or patrolling.

employees, or the approaches and entrances thereto, or loitering in or about any of the places named, or making loud or boisterous noises in the vicinity thereof, for the purpose of intimidating or interfering with the plaintff's officers, employees, business or property; from interfering with the free access of employees of plaintiff to plaintiff's premises, and their places of work, and the free and unmolested return of said employees to their places of business or their homes; from interfering by any act, or causing annoyance which will interfere in any manner with the employees of plaintiff, or its business or property; from giving any directions or orders to committees, associates, or otherwise, for the performance of any such acts or threats hereby enjoined, and from, in any manner whatever, impeding, obstructing, or interfering with the regular operation and conduct of the business of the plaintiff, or the employees now in the employ of plaintiff, or that may hereafter be employed by it.

From giving any directions or orders to committees, associations, or otherwise, for the obstructing or interfering with the business of the Plaintiff.

And it is further ordered that the aforesaid injunction and writ of injunction shall be in force and binding upon all of the defendants hereinbefore named, their associates, confederates, and also upon all other persons whomsoever who are not named herein, from and after the time when such other persons shall have knowledge of the entry of this order, and the existence of this injunction.

Injunction in force and binding on Defendants and all others.

It is further ordered and adjudged that the plaintiff herein recover against the defendants named herein its costs expended in this cause, amounting to $————, and execution shall issue therefor.

Judgment for costs.


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